

United States
Circuit Court of Appeals

For the Ninth Circuit.

WEST COAST LIFE INSURANCE COMPANY,
a corporation, PACIFIC NATIONAL BANK
OF SAN FRANCISCO, a national banking
association, et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT and RE-
~~CONSTRUCTION FINANCE CORPORATION;~~
Appellees.

Transcript of Record

In Four Volumes

VOLUME I

Pages 1 to 266

Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

FILED

SEP 15 1939

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William Payne; C. H. Pearsall; Alice B. Stein;
Sherman Stevens; E. G. Soule; Margaret B.
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Frances V. Wheeler; Miriam H. Parker; Apphia
Vance Morgan; First National Bank of Pomona;
George F. Covell; Alma H. Woore; George
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*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Southern District of California, Northern
Division.

In Bankruptcy No. 4818

In the Matter of

MERCED IRRIGATION DISTRICT,
Debtor.

CITATION ON APPEAL

United States of America—ss.

To the Merced Irrigation District, Petitioner in the
Above Entitled Proceeding, and to All Attor-
neys and Solicitors of Record of Said Party:

You are hereby cited and admonished to be and
appear at a session of the United States Circuit
Court of Appeals for the Ninth Circuit, to be held
at the City of San Francisco, in the State of Cali-
fornia, on the 29th day of April, 1939, pursuant to
the appeal duly obtained and filed in the office of
the Clerk of the above entitled court and in the
above entitled cause, in which said appeal the fol-
lowing persons are appellants: West Coast Life
Insurance Company, a corporation; Pacific Na-
tional Bank of San Francisco, a national banking
association; Mary E. Morris; R. D. Crowell; Belle
Crowell; Claire S. Strauss; Minnie E. Rigby as
Executrix, and Richard tum Suden as Executor, of
the Last Will of William A. Lieber, Alias, De-
ceased; Florence Moore; [2] American Trust Com-
pany as trustee under a certain agreement between

R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayston Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isa-

bella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, and in which said appeal the Merced Irrigation District is appellee, and you are required to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to [3] the parties in that behalf.

Witness, the Honorable Paul J. McCormick, United States District Judge of the Southern District of California, this 30th day of March, 1939, and of our Independence the 163rd.

PAUL J. McCORMICK

United States District Judge.

Service and receipt of a copy of the foregoing Citation on Appeal admitted this 5th day of April, 1939.

HUGH K. LANDRAM

C. RAY ROBINSON

DOWNEY, BRAND &

SEYMOUR

STEPHEN W. DOWNEY

Attorneys for Merced

Irrigation District, Appellees.

[Endorsed]: Filed April 10, 1939. [4]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California

County of Stanislaus—ss.

Esther Mortensen, being first duly sworn, deposes and says:

That she is a citizen of the United States; Resident of the County of Stanislaus; over the age of eighteen years and not a party to nor interested in the above entitled matter; that on the 25th day of April, 1939, she placed a full, true, and correct copy of the Citation on Appeal on file in this cause, in an envelope, duly sealed and deposited the same in the United States Post Office, at Turlock, California, with the postage thereon fully prepaid, addressed to Reconstruction Finance Corporation, Washington, D. C.; that there is a regular daily communication by mail between Turlock and Washington, D. C.

ESTHER MORTENSEN

Subscribed and sworn to before me this 25th day of April, 1939.

[Seal]

GILBERT MOODY

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Filed April 26, 1939. [6]

In the District Court of the United States, for the
Southern District of California, Northern
Division.

In Bankruptcy No. 4818

In Proceedings for Confirmation of a Plan of
Composition of Bond Indebtedness.

In the Matter of

MERCED IRRIGATION DISTRICT,
Debtor.

PETITION FOR CONFIRMATION OF A
PLAN OF COMPOSITION OF BOND
INDEBTEDNESS.

To the Honorable United States District Court, for
the Southern District of California, Northern
Division:

Merced Irrigation District, hereinafter styled
“Petitioner,” files this the petition of said District
for confirmation of a plan of composition of its
bond indebtedness and alleges:

I.

That petitioner is an irrigation district duly
formed, organized and existing in accordance with
and under and by virtue of the provisions of The
California Irrigation District Act of the State of
California. That said District comprises approxi-
mately one hundred eighty-nine thousand (189,000)
acres of land and is located wholly in the County of
Merced, in the Southern Judicial District of Cali-

fornia, Northern Division, and within [8] the jurisdiction of the above entitled Court. That said petitioner irrigation district is a taxing agency or instrumentality organized and created for the purpose of constructing, improving, maintaining and operating certain improvements and projects devoted chiefly to the improvement of the lands in said district for agricultural purposes, to-wit, the supplying of water for the irrigation of said lands and providing for the drainage of said lands where necessary. That by reason of the facts hereinabove and hereinafter alleged, petitioner is entitled to the relief offered by that certain Act of Congress of the United States entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, hereinafter referred to as the Federal Bankruptcy Act, as said Act has been amended and is now in effect and particularly Chapter X thereof as amended by Public No. 302 of the Seventy-fifth Congress, Chapter 657, First Session, approved August 16, 1937, hereinafter referred to as "Chapter X", and this petition is filed pursuant to the provisions thereof.

II.

That petitioner is unable to meet its debts as they mature. That it has been continuously in default on both the principal and interest maturing on its bond indebtedness since the 1st day of July, 1933; that the total amount now in default on said bond indebtedness is in excess of Five Million

Dollars (\$5,000,000.00) ; that petitioner has not been able and is not now able and will not be able to collect revenue from assessments on the lands within its boundaries and/or from tolls and charges fixed for the use of water and/or from the sale of water and power or otherwise or at all sufficient to meet its said obligations now due or as they mature. That by reason of the facts aforesaid [9] petitioner desires to effect a plan of composition of its outstanding bond indebtedness, which said bond indebtedness including the interest thereon is payable (a) from revenue derived from annual assessments levied against and constituting liens upon the lands within the boundaries of petitioner, or the Board of Directors of petitioner may in lieu (either in whole or in part) of levying assessments for said purpose, (b) apply income thereto derived by petitioner from the sale of water or power or both.

That said bond indebtedness of Merced Irrigation District which it is desired to readjust consists of three (3) issues of bonds aggregating the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), together with matured and unpaid interest thereon described as follows, to-wit:

(a) An issue of bonds designated as First Issue in the aggregate principal amount of Eleven Million Nine Hundred Forty Thousand Dollars (\$11,940,000.00) payable as follows:

1. Division First, all dated January 1, 1922, being in the aggregate principal amount

of Three Million Sixty Thousand Dollars (\$3,060,000.00) bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1934 to 1950 (both inclusive).

2. Division Second, all dated January 1, 1922, being in the aggregate principal amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, pay- [10] able semi-annually on the first day of January and the first day of July of each year, due serially from 1951 to 1953 (both inclusive).

3. Division Third, all dated January 1, 1922, being in the aggregate principal amount of One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1954 to 1955 (both inclusive).

4. Division Fourth, all dated January 1, 1922, being in the aggregate principal amount of Five Million Seven Hundred Sixty Thousand Dollars (\$5,760,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of

July of each year, due serially from 1956 to 1962 (both inclusive).

(b) Issue of bonds designated as Second Issue, all dated May 1, 1924, in the aggregate principal amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1937 to 1964 (both inclusive).

(c) An issue of bonds designated as Third Issue, all dated April 1, 1926, in the aggregate principal amount of One Million Dollars (\$1,000,000.00), bearing interest [11] at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1965 to 1966 (both inclusive).

That all of said bonds have been duly issued under the provisions of said "California Irrigation District Act" which said Act, together with the Act of the Legislature of the State of California, approved June 19, 1931, page 2263, as amended, provide for the method of levying assessments by petitioner upon the lands located therein for the purpose of paying the principal amounts of, and interest on said bonds and for other purposes; that

all of said bonds are in substantially the following form:

United States of America
State of California

Bond No.		Dollars
.....	Series No.

Merced Irrigation District

.....IssueDivision
------------	---------------

The Merced Irrigation District of the County of Merced, State of California, an irrigation district duly organized and existing under and in pursuance of the laws of the State of California, is indebted to and promises to pay to the bearer hereof, for value received, the sum of..... on the 1st day of, with interest thereon from the date hereof until the maturity hereof at the rate of.....per annum, payable semi-annually on the first day of January and the first day of July of each year. Said principal sum and [12] interest are payable in gold coin of the United States of America at the office of the Treasurer of said district, the same being in the City of Merced, in the County of Merced, State of California, and said interest is payable only upon presentation and surrender of the proper coupon hereto attached.

This bond is one of the.....division of the.....issue of bonds of Merced Irrigation District. Said.....issue con-

sists of bonds of the face value of \$12,000,000 divided into thirty series (numbered consecutively from First to Thirtieth, inclusive) and maturing as follows: \$60,000, January 1, 1933; \$63,000, January 1, 1934; \$67,000, January 1, 1935; \$74,000, January 1, 1936; \$75,000, January 1, 1937; \$80,000, January 1, 1938; \$85,000, January 1, 1939; \$90,000, January 1, 1940; \$95,000, January 1, 1941; \$101,000, January 1, 1942; \$107,000, January 1, 1943; \$113,000, January 1, 1944; \$120,000, January 1, 1945; \$127,000, January 1, 1946; \$426,000, January 1, 1947; \$480,000, January 1, 1948; \$480,000, January 1, 1949; \$480,000, January 1, 1950; \$600,000, January 1, 1951; \$600,000, January 1, 1952; \$600,000, January 1, 1953; \$600,000, January 1, 1954; \$720,000, January 1, 1955; \$720,000, January 1, 1956; \$720,000, January 1, 1957; \$720,000, January 1, 1958; \$840,000, January 1, 1959; \$840,000, January 1, 1960; \$960,000, January 1, 1961; \$960,000, January 1, 1962; said.....Division of said.....

Issue consists of 1320 bonds, comprising the bonds of the twenty-second and the twenty-third series [13] of said Issue, maturing respectively January 1, 1954, and January 1, 1955, and numbered consecutively from 5082 to 6401, inclusive, aggregating \$1,320,000. All of said bonds of said.....Division are of the denomination of \$1000 each.

This bond is issued by authority of an Act of the Legislature of the State of California, approved March 31, 1897, entitled, "An Act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," and of the acts amendatory thereof, and supplemental thereto, and pursuant to a vote of the electors of said district at an election duly called and held in conformity with the requirements of said statute.

It is hereby certified, recited and declared, that this bond is issued in strict conformity with the constitution and statutes of the State of California, and with proceedings of the said Irrigation District authorizing the same, and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this bond, have existed, happened and been performed in regular and due time, form and manner as required by law and that this bond, together with all the other indebtedness and liabilities of said Irrigation District does not exceed any limit prescribed by the constitution or statutes of said state.

In Witness Whereof, the said Merced Irrigation District [14] has caused this bond to be signed by the President and Secretary of its

Board of Directors and the seal of said district to be affixed hereto, and has caused all the coupons attached hereto to be signed by said Secretary by his facsimile signature, as of the first day of January, 1922.

MERCED IRRIGATION
DISTRICT,

By
President of Board of Directors of Merced Irrigation District.

.....
Secretary of Board of Directors of Merced Irrigation District.

Interest Coupon No.
\$.....

On the First day of January, 19....., Merced Irrigation District will pay to the bearer at the office of the Treasurer of said District at Merced, in the County of Merced, State of California, on surrender of this coupon, the sum of.....Dollars in United States Gold Coin, being the semi-annual interest on Bond No.....of the..... Issue.

.....(Signed)
Secretary

III.

That a plan of composition of the aforesaid bond indebtedness of said petitioner, has been prepared

and adopted by the Board of Directors of petitioner in a certain resolution adopted by said Board on the 31st day of May, 1938, which said resolution is hereto attached, marked Exhibit "A" and hereby made a part of this petition and is filed and submitted herewith. [15]

IV.

That all steps necessary to be taken to make said plan of composition effective have been taken, and that heretofore the refunding bonds to be issued and delivered under the conditions of said plan, have been duly authorized by said District. That said bonds will, when issued, bear four per cent (4%) interest per annum, payable semi-annually.

V.

That the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States, has purchased pursuant to contract with petitioner and now owns and holds over ninety per cent (90%) of the principal amount of said bond indebtedness of said District, to-wit, approximately Fourteen Million Six Hundred Eighty-six Thousand Dollars (\$14,686,000.00) of the principal bond indebtedness of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), as aforesaid, and said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned and held.

That there are no bonds owned, held or controlled by said District. That said Reconstruction Finance Corporation has, in writing, accepted said plan of composition and its acceptance is hereunto attached, marked Exhibit "B" and hereby made a part hereof. That a list of all known creditors of said District who are affected by said plan of composition, together with their addresses so far as known to petitioner, and a description of their respective claims is hereunto attached, marked Exhibit "C", and made a part hereof. That said list shows separately the name of the Reconstruction Finance Corporation which has accepted said plan of composition, together with its separate address, and that said [16] list shows separately the names of those creditors of petitioner affected by said plan of composition who have not accepted said plan together with their separate addresses so far as known to petitioner and a description of the bonds whose owners are unknown to petitioner. That petitioner, by filing the list of creditors does not admit the validity of their claims nor does petitioner intend hereby to acknowledge any of said bonds or coupons so listed which are barred by the statute of limitations.

That in addition to the known creditors of said petitioner who are affected by said plan of composition, there is attached hereto, marked Exhibit "D" and made a part hereof, a list of creditors of said district whose claims are not so affected. Division 1

of said Exhibit "D" are claims arising in connection with certain continuing and executory contracts dated July 17, 1924, called "Crocker-Huffman Water Contracts." Under the terms and provisions of said contracts the owners of underlying water rights, agreed to release the same to petitioner, upon the payment by petitioner annually, on July 1st of each year for a certain term of years, the present remainder of which extends to and includes the year 1941, to the owners of said underlying water rights so agreeing to release the same as aforesaid, or their assigns, the respective amounts appearing in said Division 1 of said Exhibit "D"; Division 2 of said Exhibit "D" is a statement of certain claims of the County of Merced, State of California, as a creditor of petitioner, and is divided into two (2) subdivisions, as follows, to-wit: Subdivision "A" consists of a list of certain presently outstanding bonds, together with the maturity dates thereof, of that certain Drainage Improvement District located within and organized by said County of Merced and designated as "Drainage Im- [17] provement District No. 2" of said County of Merced, which bonds are obligations of said County, the payment of the principal amounts of which on behalf of said County, together with interest thereon at the rate of five per cent (5%) per annum, is a present obligation of petitioner by virtue of the terms and provisions of a certain contract of assumption thereof dated

April 6, 1922, entered into by and between petitioner and said County of Merced; Subdivision "B" consists of a list of certain presently outstanding bonds, together with the maturity dates thereof, of a certain Drainage District located in and organized by said County and designated as "Fruitland Drainage District," which bonds are obligations of said County, the payment of the principal amounts of which on behalf of said County, together with interest thereon at the rate of six per cent (6%) per annum, is a present obligation of petitioner by the terms and provisions of a certain contract of assumption thereof heretofore entered into on or about April 6, 1922, by and between petitioner and said Fruitland Drainage District; that none of the creditors' claims named in said Exhibit "D" is involved in or affected by said plan of readjustment; and that only the bond indebtedness of petitioner, is affected by such plan.

VI.

That said plan of composition is fair, equitable and for the best interests of the creditors of Merced Irrigation District who are affected thereby and does not discriminate in favor of or against any creditor or creditors or class of creditors. That the offer of said plan of composition and its acceptance by over ninety per cent (90%) of its bondholders and the filing of this petition are all in good faith and the District is [18] authorized by

law to take all action necessary to be taken to carry out said plan of composition.

VII.

That by said resolution adopted the 31st day of May, 1938, (being Exhibit "A" attached hereto), the Board of Directors of petitioner has authorized the filing of this petition.

Wherefore, petitioner prays:

(a) That the Court enter an order herein approving this petition as properly filed under said Chapter X of said Bankruptcy Act.

(b) That an order be entered fixing a time and place for a hearing of this petition and providing that notice be given to creditors as provided by said act and prescribing the form of such notice of any tax or assessment, or the levying of any execution against the property of petitioner during the pendency of this proceeding; and

(c) That, upon the completion of the hearing of the plan, an interlocutory decree be entered, approving the plan and putting it into effect; and

(d) That, when petitioner shall have complied with the requirements of said interlocutory decree to be performed by it, a final decree be entered discharging petitioner from all debts and liabilities, in accordance with the plan; and

(e) That the Court grant such further orders, [19] decrees and relief in the premises as may be deemed just and equitable.

Dated:

MERCED IRRIGATION
DISTRICT,

By D. K. BARNELL,

President.

And By H. P. SARGENT,

Secretary

Petitioner.

C. RAY ROBINSON,
HUGH K. LANDRAM,
STEPHEN W. DOWNEY,
DOWNEY, BRAND &
SEYMOUR,

Attorneys for Petitioner.

* * * * *

(Verification dated June 16, 1938, omitted.) [20]

EXHIBIT "A"

RESOLUTION OF THE BOARD OF DIRECTORS OF MERCED IRRIGATION DISTRICT AUTHORIZING AND DIRECTING ITS REPRESENTATIVES TO INSTITUTE AND PROSECUTE TO A FINAL DETERMINATION AN ACTION OR PROCEEDING UNDER THE NATIONAL BANKRUPTCY ACT FOR THE PURPOSE OF READJUSTING THE DISTRICT'S OUTSTANDING BOND INDEBTEDNESS AND SETTING FORTH THE PLAN OF COMPOSITION OF SAID BOND INDEBTEDNESS.

Whereas, the territory within the Merced Irrigation District, all of which is located in Merced

County, California, (hereinafter called "district"), consists of lands used principally for agricultural purposes and the district has completed and operates certain improvements and projects devoted chiefly to the improvement of the lands in said district for agricultural purposes, to-wit: The supplying of water for the irrigation of said lands and providing for the drainage of said lands, where necessary, the cost of which was largely paid for out of the proceeds received from the sale of bonds issued and sold by the district for such purpose; and

Whereas, due to the general depression and adverse agricultural conditions existing throughout the United States for the last several years, and the consequent low market value of farm products, the production of farm products in this district has been without profit, the value thereof often being less than the cost of production, with the result that the owners have been and will be unable to pay the district taxes levied upon the lands therein for the purpose of paying the district's bond indebtedness as and when the installments of principal and interest thereof have matured or will mature; and

Whereas, by reason of such adverse agricultural conditions and accumulated delinquent taxes, the value of the lands in the district has greatly decreased; and [21]

Whereas, the district, without success has made due and diligent effort to collect the taxes so levied by it upon the lands therein whereupon it became apparent that unless the outstanding bond indebted-

ness of the district was reduced and refinanced the burden of district taxes upon the lands therein would be greater than the value thereof; and

Whereas, there are now issued and outstanding bonds of Merced Irrigation District totaling the sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) in principal amount, described as follows, to-wit:

(a) An issue of bonds designated as First Issue in the aggregate principal amount of Eleven Million Nine Hundred Forty Thousand Dollars (\$11,940,000.00) payable as follows:

1. Division First, all dated January 1, 1922, being in the aggregate principal amount of Three Million Sixty Thousand Dollars (\$3,060,000.00) bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1934 to 1950 (both inclusive).

2. Division Second, all dated January 1, 1922, being in the aggregate principal amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), bearing interest at the rate of five and one-half per cent (5½%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1951 to 1953 (both inclusive). [22]

3. Division Third, all dated January 1, 1922, being in the aggregate principal amount

of One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00), bearing interest at the rate of Five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1954 to 1955 (both inclusive).

4. Division Fourth, all dated January 1, 1922, being in the aggregate principal amount of Five Million Seven Hundred Sixty Thousand Dollars (\$5,760,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1956 to 1962 (both inclusive).

(b) Issue of bonds designated as Second Issue, all dated May 1, 1924, in the aggregate principal amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1937 to 1964 (both inclusive).

(c) An issue of bonds designated as Third Issue, all dated April 1, 1926, in the aggregate principal amount of One Million Dollars (\$1,000,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually, on the first day of January

and the first day of July of each year, due serially from 1965 to 1966 (both inclusive).

[23]

That all of said bonds have been duly issued under the provisions of said "California Irrigation District Act" which said Act, together with the Act of the Legislature of the State of California, approved June 19, 1931, page 2263, as amended, provide for the method of levying assessments by petitioner upon the lands located therein for the purpose of paying the principal amounts of, and interest on said bonds and for other purposes; and

Whereas, said bond indebtedness and the interest thereon due as of July 1, 1933, and subsequently, is unpaid and in default; and

Whereas, said district is unable to pay said bond indebtedness or its debts as they mature unless said bond indebtedness is readjusted as hereinafter provided; and

Whereas, said district does not own, hold or control any of the bonds or interest coupons appurtenant thereto constituting any of said bond indebtedness; and

Whereas, heretofore the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States of America, allocated certain funds for the purpose of assisting Merced Irrigation District to refinance its bond indebtedness under the plan of composition hereafter described and said district has heretofore, after proceedings to that end duly had and taken, authorized the issuance

and delivery of refunding bonds hereinafter referred to and necessary to carry out said plan of readjustment; and

Whereas, the terms and conditions governing the relations between the Reconstruction Finance Corporation and the Merced Irrigation District; the purchase of presently outstanding old bonds of Merced Irrigation District by the Recon- [24] struction Finance Corporation: the exchange of old bonds purchased by the Reconstruction Finance Corporation for refunding bonds of the Merced Irrigation District: the terms and provisions of said refunding bonds and their issuance and payment by Merced Irrigation District, are set forth in the following resolutions and contracts, to-wit:

1. Resolution of Reconstruction Finance Corporation, dated November 14, 1934, awarding loan to Merced Irrigation District and setting forth the terms and conditions thereof, and certain resolutions of Reconstruction Finance Corporation amendatory thereof and supplemental thereto, all of which resolutions were duly accepted by Merced Irrigation District;

2. Contract duly entered into by and between Reconstruction Finance Corporation and Merced Irrigation Districted, dated August 14, 1935

3. Contract duly entered into between Merced Irrigation District and Reconstruction Finance Corporation, dated September 16, 1935; and;

Whereas, the plan of composition hereinafter set forth has been determined by the district to be fair and equitable to both the holders of its outstanding bonds and to the owners of the lands within the district and to be based upon what said district and the lands thereof shall be able to pay; and

Whereas, it is impossible for the district to consummate said plan unless it institutes and prosecutes to final determination an action or proceeding in the District Court of the United States, in and for the Southern Division of California, Northern Division, (hereinafter called "court") pursuant to the [25] Provisions of Chapter X of the National Bankruptcy Act approved July 1, 1898, as amended by Public No. 302, 75th Congress, approved August 16, 1937, whereby all of the district's outstanding bond indebtedness will be readjusted and refinanced to accordance with the plan of composition therefor as hereinafter set forth;

Now, Therefore, Be It

Resolved, that the following plan of composition of the bond indebtedness of said district be adopted, approved and confirmed as follows, to-wit:

That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be

retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven

and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred [26] Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90), bearing interest at the rate of four per cent (4%) per annum.

The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto. In the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the President and Secretary of the district; and

Be It Further Resolved, that Messrs. C. Ray Robinson, Hugh K. Landram, Stephen W. Downey,

and Downey, Brand and Seymour, as attorneys for this District be, and they are hereby authorized and directed to file in the District Court of the United States for the Southern District of California a petition as provided in the National Bankruptcy Act for the confirmation of said plan for the composition of the bond indebtedness of this District and that the President and Secretary of this Board, or either of them be, and they are hereby authorized and directed to sign and verify said petition in the name of and on behalf of said District and to execute in the name of said District such instruments as may be necessary or proper to obtain the confirmation of said plan and that said attorneys and officers be, and they are hereby authorized to take such other and further action and proceedings on behalf of this District as may be necessary to obtain the confirmation of said plan. [27]

I, H. P. Sargent, Secretary of Merced Irrigation District, do hereby certify that the foregoing is a true and correct copy of resolution adopted at a regular adjourned meeting of the Board of Directors of Merced Irrigation District held on the 31st day of May, 1938 by the following vote of said Board:

Ayes: President D. K. Barnell, W. H. Robinson, E. B. Maze, E. B. Wood, J. A. Wolf.

Noes: None.

Absent: None.

In Witness Whereof, I have hereunto affixed my hand and the seal of the said District, this 2nd day of June, 1938.

[Seal]

H. P. SARGENT,

Secretary

Merced Irrigation District. [28]

EXHIBIT "B"

ACCEPTANCE OF PLAN OF COMPOSITION
OF DEBTS OF MERCED IRRIGATION
DISTRICT, MERCED, CALIFORNIA

Whereas, this Corporation has purchased and now holds bonds aggregating in principal amount \$14,686,000 of Merced Irrigation District, Merced, California; and

Whereas, the total of said bonds held by this Corporation as purchaser is in an amount exceeding 90% of the bonded indebtedness of said District; and

Whereas, said District desires to file a Petition in the United States District Court, under the provisions of Sections 81, 82 and 83 of an Act of Congress of the United States entitled, "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, as amended, in order to effect a plan of composition of its outstanding indebtedness; and

Whereas, the Board of Directors of said District adopted a plan of composition of its outstanding

indebtedness on the basis and including the terms and conditions as follows:

That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing [29] coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven

and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum.

The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1,

1933, and subsequently thereto. In the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the President and Secretary of the district; and

Whereas, such plan of composition appears to be fair, just and reasonable, and adopted in good faith on the part of such District, and has been approved by the Division Chief or Acting Chief of the Drainage, Levee and Irrigation Division and Counsel for this Corporation; and

Whereas, its adoption by Reconstruction Finance Corporation appears advisable;

Now, Therefore, by reason of the foregoing facts, and on the recommendation of the Division Chief or Acting Chief, such proposed plan of composition submitted by the Board of Directors of Merced Irrigation District, Merced, California, be and hereby is approved and accepted by Reconstruction Finance [30] Corporation.

And Reconstruction Finance Corporation consents that such District may file its petition for composition of its indebtedness in the United States District Court, as provided by the Act of Congress entitled, "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereto.

Witness the execution of this acceptance this ninth day of June, 1938.

[Seal]

RECONSTRUCTION

FINANCE CORPORATION

By RONALD H. ALLEN, JR.,

Assistant Secretary. [31]

[Endorsed]: Petition for Confirmation of Plan of Composition of Bond Indebtedness. Filed June 17, 1938. [33]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated that "Exhibit C" attached to and filed with the petition herein is a list of all known creditors of Merced Irrigation District affected by the plan of composition, their addresses so far as known to said district and a description of their respective claims showing separately those who have accepted the plan of composition, together with their separate addresses; and that "Exhibit D" is a similar list of creditors of said District whose claims are not affected by the plan of composition with their addresses so far as known to said district and a description of their respective claims, and that said Exhibits "C" and "D" may be omitted from the record on appeal herein.

Dated: May 29, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND &
SEYMOUR,

STEPHEN W. DOWNEY,

Attorneys for Appellee.

CHARLES L. CHILDERS,
HUGH K. McKEVITT, [34]
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER &
HARRISON,

W. COBURN COOK,

By W. COBURN COOK,

Attorneys for Appellants.

[Endorsed]: Filed July 14, 1939. [35]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled cause that the petition of Merced Irrigation District for confirmation of a plan for the composition and readjustment of its debts was, upon the filing thereof, duly approved by the court as properly filed and was duly and regularly set for hearing by the court and that said petition came on regularly to be heard

before the court upon a date to which the hearing had been duly and regularly continued by the court and that notice of time and place of hearing of said petition was published, mailed and given in all respects for the time and in the manner required by law and by the order of the court.

Dated: May 12, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND &
SEYMOUR,

STEPHEN W. DOWNEY,
Attorneys for Merced Irrigation, District, Appellee. [36]

CHAS. L. CHILDERS,
HUGH K. McKEVITT,
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER &
HARRISON,

W. COBURN COOK,
By W. COBURN COOK,
Attorneys for Appellants.

[Endorsed): Filed May 24, 1939. [37]

At a stated term, to wit: The April Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of

the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 12th day of September in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on proceedings for confirmation of a Plan of Composition of Bond indebtedness filed September 1, 1938; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; Fred Pierce, Esq., appearing for the Debtor;

It is ordered that this matter be hereby continued for hearing at Fresno, California, for October 10, 1938. [38]

[Title of District Court and Cause.]

ANSWERS AND OBJECTIONS OF WEST COAST LIFE INSURANCE COMPANY

Comes now West Coast Life Insurance Company, a corporation, (hereinafter in this Answer sometimes referred to as answering creditor) a creditor of petitioner, Merced Irrigation District, (hereinafter in this answer sometimes referred to as petitioner), and for answer to the petition of said

petitioner for composition of its bond indebtedness filed herein, objects to the plan for composition of bond indebtedness proposed in, referred to in, or filed with said petition, and without consenting thereto, admits, denies and alleges:

I.

That this answering creditor, West Coast Life Insurance Company, is and at all times herein mentioned has been a corporation, duly organized and existing under and by virtue of the Laws of the State of California, for, and engaged in, the transaction of insurance business, authorized by such laws, with its principal office and place of business in the City and County of San Francisco, State of California. [39]

II.

That this answering creditor is now and since long prior to the filing of said petition has been, a creditor of the petitioner herein, to-wit: The owner and holder of certain of the issued, outstanding and unpaid bonds of petitioner, involved in these proceedings, in the principal amount of \$100,000.00, together with unpaid interest coupons attached or originally attached to said bonds, to which they respectively relate, both said bonds and said interest coupons being hereinafter more fully referred to; that said bonds of petitioner so owned and held by this answering creditor were and each of them was for a valuable consideration, sold and issued by petitioner for the purpose of construct-

ing or purchasing necessary irrigation canals or works, or acquiring necessary property and right therefor, or for the purpose of acquiring waters, water rights, reservoirs, reservoir sites or other property necessary for the purposes of said petitioner, or to provide for drainage made necessary by irrigation provided for by said petitioner, or to provide for the construction, acquisition, operation, leasing or control of plants for the generation, distribution, sale or lease of electrical energy or for a combination of two or more of such purposes, by the terms of each of which of said bonds the petitioner promises and agrees to pay to bearer the principal amount thereof on the due date therein named, together with interest thereon at the rate of 6% per annum, payable semi-annually on the 1st day of January and the 1st day of July each year after the date of said bond until the due date thereof, and that each of said semi-annual interest payments on each of said bonds is represented by a coupon attached or originally attached to the bond to which it relates, by the terms of which the petitioner promised and agreed to pay to bearer on the date therein named, the amount of interest represented thereby; that all of said bonds and interest coupons [40] so owned and held by this answering creditor are unpaid and are, and the interest of this answering creditor is materially and adversely affected by the plan of composition proposed in or by said petition; that a full, true and correct list of the said bonds and interest cou-

pons of petitioner, and so owned and held by this answering creditor, is attached hereto, marked Exhibit "A" and by reference thereto made a part of this answer; that column numbered "I" on said Exhibit "A" designates the number of the particular bond so owned and held by this answering creditor, and that in each instance where two numbers are set out in the same line in said column numbered "I" with a line or dash between said numbers, this answering creditor is the owner and holder of the bonds the numbers of which are given, and the owner and holder of the bonds bearing each consecutive number between the numbers given; column numbered "2" on said exhibit designates the particular issue of the bonds of which the bonds referred to in column numbered "I" in the same line is a part; column numbered "3" on said exhibit designates and is the due date or the date of maturity of each of the bonds referred to by number in column numbered "I" in the same line; column numbered "4" on said exhibit indicates and is the principal amount or par value of each of the bonds referred to in column numbered "I" in the same line; column numbered "5" on said exhibit designates by the due dates thereof unpaid interest coupons so owned and held by this answering creditor, and attached or originally attached to the bonds referred to in column numbered "I" in the same line. That each of said bonds and interest coupons so owned and held by this answering creditor and past due, both as herein-

above alleged, was presented for payment to the Treasurer of said Petitioner at his office at Merced, California, and payment thereof then and there demanded on or about the due date thereof, but that payment thereof was in each instance then and there [41] refused upon the ground that money was not available in the fund designated for the payment thereof and that the same was then and there stamped to that effect; that said bonds and interest coupons of petitioner so held and owned by this answering creditor have not been paid nor any part thereof.

III.

That said bonds of petitioner so owned and held by this answering creditor were in the manner provided by law presented by petitioner prior to the issuance thereof for certification as legal investments for all trust funds and for the funds of all insurance companies, banks, both commercial and savings and trust companies, and for the state school funds, and otherwise, and were, after investigation as provided by law, duly certified for said purposes and that each of said bonds, prior to the purchase thereof by this answering creditor, had stamped thereon a certificate in words and figures substantially as follows:

“STATE CONTROLLER’S CERTIFICATE

Sacramento, California,19.....

I, Ray L. Riley, Controller of the State of California, hereby certify that the within bond

No. of Issue of the Merced Irrigation District, issued as of May 1st, 1924, in accordance with an act of the Legislature of California, approved June 13, 1913, a legal investment for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, trust companies, the state school funds and any funds which may be invested in county, municipal or school district bonds, and it may be deposited as security for the performance of any act whenever the bonds of any county, city, city and county, or school district may be so deposited, it being entitled to such privileges by virtue of an examination by the state engineer, the attorney general and the superintendent of banks of the State of California in pursuance of said act. The within bond may also, according to the Constitution of the State of California, be used as security for the deposit of public money in banks in said State.

RAY L. RILEY,

Controller of the State
of California. [42]

with the appropriate date, bond and issue number.”

IV.

Answering a portion of paragraph I of said petition, this answering creditor denies that by reason of the facts in said petition alleged or otherwise, petitioner is entitled to the relief offered by

that certain act of Congress of the United States entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, in said petition referred to as "Federal Bankruptcy Act" as said Act has been amended and is now in effect and particularly Chapter X. thereof as amended by public No. 302 of the 75th Congress, Chapter 657, First Session, approved August 16, 1937, in said petition referred to as "Chapter X".

V.

Answering a portion of paragraph II of said petition, this answering creditor is without knowledge as to whether or not petitioner is unable to meet its debts as they mature; and as to whether or not the total amount now in default on the bond indebtedness of said petitioner is in excess of \$5,000,000.00 and as to whether or not petitioner has not been able and is not now able and will not be able to collect revenue from assessments on the lands within its boundaries and/or from tolls and charges fixed for the use of water and/or from the sale of water and power or otherwise or at all sufficient to meet its said obligations now due or as they mature and, therefore neither admits nor denies said allegations, but requires the petitioner to make strict proof thereof, and in this connection this answering creditor is informed and believes and upon such information and belief alleges that long prior to the commencement of these proceedings the Reconstruction Finance Corpora-

tion loaned to the petitioner and petitioner borrowed from Reconstruction Finance Corporation approximately \$8,000,000.00 [43] payable in installments over a period of approximately forty years with interest at the rate of 4% per annum payable semi-annually with which money so borrowed from Reconstruction Finance Corporation by petitioner, the bonds of petitioner alleged in the petition in the principal amount of \$14,686,000.00, or thereabouts, together with the unpaid interest thereon have been paid, satisfied, discharged and that the petitioner has no other or further obligations thereon whatever and upon the same ground this answering creditor alleges that none of the principal amount of the said obligation to Reconstruction Finance Corporation by petitioner is yet due or payable and that all accrued interest upon said loan from Reconstruction Finance Corporation has been fully paid, and that petitioner's only obligations consist of its obligation to Reconstruction Finance Corporation for the payment of said loan together with interest thereon at the rate of 4% per annum, payable semi-annually together with \$1,504,000.00, or thereabouts, principal amount of original bond not paid by said loan from Reconstruction Finance Corporation to petitioner, among which bonds not paid by said loan are the bonds so owned and held by this answering creditor as hereinabove alleged, together with unpaid interest thereon.

VI.

Answering paragraph III of said petition this answering creditor admits that on or about the 31st. day of May, 1938, the Board of Directors of petitioner passed that certain Resolution set out as Exhibit "A" to said petition, which Resolution sets out a so-called plan of composition of the bond indebtedness of Petitioner, but that this answering creditor is informed and believes and upon such information and belief alleges that the plan set out in said Resolution of May 31, 1938, was approved and adopted by said Board of Directors of Petitioner on or prior to the 18th. day of April, 1935, and that said plan has, prior to the commencement of these proceedings, been more than 90% [44] consummated by the retirement through use of said loan from Reconstruction Finance Corporation of \$14,686,000.00, or thereabouts, in principal amount of the bonds alleged in the petition upon the terms set out in said plan of composition.

VII.

Answering a portion of paragraph V of said petition, this answering creditor is without knowledge as to whether or not the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States, has purchased, pursuant to contract of petitioner, and now owns and holds over ninety per cent (90%) of the principal amount of said bond indebtedness of said District, to-wit: Approximately fourteen million six hun-

dred eighty-six thousand dollars (\$14,686,000.00) of the principal bond indebtedness of Sixteen million one hundred ninety-thousand dollars (\$16,190,000.00) as alleged in said petition and said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned and held, and, therefore, neither admits or denies said allegations in said paragraph V, but requires the petitioner to make strict proof thereof.

VIII.

Answering a portion of paragraph VI, of said petition, this answering creditor denies that said plan of composition set out or referred to in said petition is fair, equitable and/or for the best interests of the creditors of Merced Irrigation District who are affected thereby and/or does not discriminate in favor of or against any creditor or creditors or class of creditors; that this answering creditor is without knowledge as to whether or not the offer of said plan of composition and its acceptance by over ninety per cent of its bondholders and the filing of said petition are all in good faith, and, therefore, neither admits or denies said allegations but requires the petitioner to make strict proof thereof. [45]

First Separate Defense

As A Further, Separate, and Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consent-

ing to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition and readjustment alleges:

That this Court is without jurisdiction herein in that prior to the commencement of these proceedings and on or about the 20th day of July, 1937, the petitioner filed its petition for debt readjustment in the Superior Court of the State of California, in and for the County of Merced in an action entitled "In the Matter of the Petition of Merced Irrigation District, an Irrigation District, for readjustment of Debts". and being No. 11675 in said Court; that said petition was filed pursuant to the provision of an Act of the Legislature of California known as the "Irrigation District Refinancing Act" being Chapter IV of the Statutes of California of 1937; that the plan of readjustment set out and described in said petition in the Superior Court of the State of California, in and for the County of Merced, hereinabove alleged, is the same identical plan as the plan of composition set out in these proceedings and that it is therein alleged that said plan of readjustment set out in said action in the Superior Court of Merced County was adopted in the form of a resolution by the board of directors of petitioner on the 15th. day of July, 1937; that this proceeding and the said action in the Superior Court of the State of California, in and for the County of Merced, is between the same identical

parties and involves the same indebtedness; that this answering creditor filed its answer, along with other creditors of petitioner in the said action in the Superior Court above alleged and proceedings were thereupon taken to the end that on or about the 5th. day of January, 1938, a trial on the [46] merits was had in said Superior Court and thereafter judgment was ordered in favor of the petitioner therein and against the respondent and that said action is still pending and undetermined; that said action in the Superior Court hereinabove alleged was commenced and was pending and the Court had fully acquired jurisdiction therein pursuant to said Act, if same is a valid law, prior to the adoption by the Congress of the United States of Chapter X of the Bankruptcy Act alleged in the petition herein.

Second Separate Defense.

As A Further, Separate, and Affirmative Defense, to Said Plan of Composition and to These Proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition, alleges:

That on or about the 18th day of April, 1935, this petitioner commenced a proceeding and filed its petition for debt readjustment in this Court in a proceeding in Bankruptcy; entitled "In the Matter of the Merced Irrigation District, an Irrigation District, Debtor", being No. 3907 in Bank-

ruptey; that said proceedings for debt readjustment filed in this Court on or about the 18th day of April, 1935, was between the same identical parties that are involved in the present proceeding and involved the same debt obligations as involved in the present proceeding and set for the same identical plan of debt readjustment as is set forth in the present proceeding as the plan of composition, that this answering creditor, together with other creditors of petitioner, in due course filed its answer and objections to said petition and said plan of readjustment therein proposed and proceedings were therein had to the end that final judgment or decree was entered therein in favor of the petitioner and against the respondents from [47] which an appeal was duly and regularly taken by the respondents to the United States Circuit Court of Appeals from the Ninth Circuit resulting in a reversal of said judgment and a mandate that said proceedings in this Court be dismissed and thereupon and upon the coming down and spreading upon the minutes of this Court of the Mandate of the United States Circuit Court of Appeals of the Ninth Circuit in said cause, which mandate was dated April 12, 1937, this Court did in due course make and enter its decree of dismissal of said petition; that thereafter, and within the time allowed by Law, the petitioner petitioned the Supreme Court of the United States in said cause for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

and that said petition was denied by the Supreme Court on October 11, 1937, and that said judgment has long since become final; that by reason of said proceedings and the decree dismissing the same, the petitioner is barred from the prosecution of these proceedings; that the former proceedings by petitioner in this Court as hereinabove alleged were prosecuted under a law substantially similar, but held to be unconstitutional, to the Law under which the present proceeding is prosecuted.

Third Separate Defense

As A Further, Separate, and Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That the petitioner is a political subdivision or governmental agency of the State of California, and that neither it nor its obligations are subject to the bankruptcy power of the United States; that the State of California has not consented nor can it [48] consent to this proceeding nor to any proceeding the result of which will have the effect of impairing the obligation of the contract; that any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Extra Session) Chapter IV or otherwise is unconstitutional and

void in that said purported consent violates the provisions of Article I, Section 16 of the Constitution of California, and Article I, Section 10 of the Constitution of the United States, both relating to the impairing of obligations of contract, and to Article IV, Section 1 of the Constitution of California, as relates to the delegation of Legislative power and Article XIII, Section 6 of the Constitution of California, as relates to the surrender of the power of taxation.

Fourth Separate Defense

As A Further, Separate, Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That Chapter X of the Bankruptcy Act of the United States under which these proceedings are prosecuted is unconstitutional and void in that it violates the provisions of Article I, Section 10, of the Constitution of the United States, and is not authorized by the provisions of Article I, Section 8, Clause 4 of the Constitution of the United States.

Fifth Separate Defense

As A Further, Separate, and Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consent-

ing to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges: [49]

That this answering creditor is informed and believes, and upon such information and belief alleges that the only consent by any creditor of the petitioner to these proceedings and to said plan of composition is given by Reconstruction Finance Corporation, an agency of the United States, and that said Reconstruction Finance Corporation is not the owner of any of the bonds of the petitioner concerning which said plan of composition is proposed; that upon the same grounds, this answering creditor alleges that long prior to the commencement of these proceedings and prior to the adoption by the Congress of the United States of Chapter X. of the Bankruptcy Act of the United States, the petitioner and said Reconstruction Finance Corporation entered into a contract by the terms of which Reconstruction Finance Corporation agreed to loan to the petitioner and did loan to the petitioner and the petitioner borrowed from Reconstruction Finance Corporation approximately eight million dollars (\$8,000,000.00) and that by said contract between Reconstruction Finance Corporation and the petitioner the petitioner agreed to repay to Reconstruction Finance Corporation the total amount of said loan over a period of approximately forty years in in-

stallments with interest at 4% per annum payable semi-annually, and to thereafter issue refunding bonds and deliver same to Reconstruction Finance Corporation therefor; that with said funds so borrowed by petitioner from Reconstruction Finance Corporation, bonds of petitioner alleged in the petition to be outstanding and unpaid, were taken up, and in legal effect paid or retired in the amount of approximately fourteen million six hundred eighty-six thousand dollars (\$14,686,000.00) in principal amount and accrued interest and that since said payment or retirement said bonds have not been and are not now a legal obligation against the petitioner, and that [50] Reconstruction Finance Corporation does not own said bonds but that if said Reconstruction Finance Corporation holds said bonds for any purpose said bonds are held by Reconstruction Finance Corporation are collateral only and that because of said relationship Reconstruction Finance Corporation is not a creditor of petitioner as represented by petitioner's bonds and is not the owner of said bonds so taken up or retired and is without power to consent to these proceedings as contemplated by the said Bankruptcy Act or otherwise.

This answering creditor is further informed and believes and upon such information and belief alleges that Reconstruction Finance Corporation and this answering creditor are not in the same class of creditors; that this answering creditor is

entitled, by its bond contracts with petitioner, to receive from petitioner at the due date the full principal amount upon each of the bonds so held and owned by this answering creditor and entitled to receive the full amount of interest set forth in the respective interest coupons attached or originally attached to the bonds so held and owned by this answering creditor to which said coupons relate and that by the terms of said plan of composition, if made effective, this answering creditor will suffer a loss in its investment in said bonds and coupons of more than 50% of the value thereof, whereas Reconstruction Finance Corporation is entitled to receive from petitioner only the amount of the loan from Reconstruction Finance Corporation to petitioner together with interest thereon at the rate of 4% per annum payable semi-annually as set forth in said contract of said Reconstruction Finance Corporation and petitioner hereinabove alleged which contract and the terms thereof, it is not proposed, in said plan of composition, to change whatever, and that therefore by the terms of said plan of composition, if put into effect, Reconstruction Finance Corporation will suffer no loss, but by forcing this answering creditor to reduce its [51] obligations against petitioner, the Reconstruction Finance Corporation will obtain a material benefit from the terms of said plans of composition, if put into effect, and therefore said plan of composition provides for discrimination between

this answering creditor and Reconstruction Finance Corporation which is unfair and unjust and not contemplated by the act under which these proceedings are prosecuted.

Sixth Separate Defense.

As a further, separate, and affirmative defense to said plan of composition and to these proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That the debts of petitioner sought to be readjusted in this proceeding by said plan of composition are not the only debts or obligations which are, in effect, liens upon the lands within the boundaries of petitioner, but this answering creditor is informed and believes, and upon such information and belief alleges, that there are within the boundaries of petitioner, three or more incorporated cities, three or more drainage districts, and numerous school districts, each owing bonded indebtedness, and that in addition thereto, there are certain road districts owing bonded indebtedness, each an obligation of the owners of the lands, or of the land, within the respective cities and districts, and each similar to the obligations of the same lands or the owners thereof to the bonded debt of petitioner involved in these proceedings, and that in addition to said public debts, this answering creditor is further informed and believes, and upon such infor-

mation and belief alleges, that more than half of the lands [52] within the petitioner are mortgaged or held under deeds of trust as security for private debts of the respective owners thereof, and that those other and additional debts and obligations, public and private, aggregate large sums of money, in excess of Five Million Dollars (\$5,000,000); that at least a portion of said other and additional debts and obligations are, as a matter of law, junior to the bonds of petitioner to which said plan of composition in these proceedings applies, that the bonds of Merced Irrigation District, therefore, constitute only one of the obligations against said lands and the owners thereof; that said plan of composition set out in said petition does not contemplate any readjustment of any such other and additional debts and obligations; and that this answering creditor is informed and believes, and upon such information and belief alleges, that no other proceeding has been commenced or is contemplated to readjust such other and additional debts or obligations, or any of them; that said plan of composition set out in the petition filed herein is unfair, inequitable and not for the best interests of the creditors of petitioner, and that said plan discriminates unfairly in favor of the owners of bonds of said cities, drainage, school and road districts within the boundaries of Merced Irrigation District, and discriminates unfairly in favor of the holders of mortgages and the beneficiaries under

deeds of trust securing private debts upon lands within the boundaries of petitioner.

Seventh Separate Defense.

As a further, separate, and affirmative defense to said plan of composition and to these proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges: [53]

That this answering creditor is informed and believes and upon such information and belief alleges that the petitioner is not indebted on its bond indebtedness in the amount alleged in the petition or in any other amount or indebted at all exceeding approximately ten million dollars (\$10,000,000) and that of said amount of ten million dollars (\$10,000,000) approximately eight million dollars (\$8,000,000) thereof is not represented by bonds but represented by the contract between petitioner and Reconstruction Finance Corporation hereinabove alleged and that the interest on said amount is not in default and that said amount bears interest at the rate of only 4% per annum payable semi-annually and that no part of the principal amount of said loan has yet matured and that the petitioner is now and will be able, without undue hardship upon petitioner or its assessment payers, to pay the entire unpaid amount of its indebtedness and the interest thereon as same matures and that there is no just reason for requiring this answering cred-

itor to accept in payment of the obligations of petitioner which it holds less than the full face amount thereof.

Eighth Separate Defense.

As a further, separate, and affirmative defense to said plan of composition and to these proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in the petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That with a portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings and described in the petition herein, the petitioner installed large hydro-electric power works and owns and operates said works and sells, under long term contract, electric energy generated at said works; that this answering creditor is informed and believes, and upon [54] such information and belief alleges, that petitioner will receive from the sale of said electric energy over and above the cost of operating said hydro-electric power works a net average annual income in excess of \$450,000; that upon the same ground this answering creditor alleges that the average cost of operation and maintenance of all works of petitioner, other than hydro-electric power works, will not exceed \$350,000 per year, and that the surplus of power revenue over and above the said cost of operation and maintenance will apply in reduction of the amounts necessary to be raised for the purpose of paying interest upon and retirement of the said

bonds of petitioner, and that the remaining portion of interest upon and retirement of the said bonds of petitioner, after said application of power revenue, will constitute the only sums for which the petitioner will be required to raise funds by assessment or otherwise.

That if the plan of composition proposed in the petition herein is made effective, then this answering creditor is informed and believes, and upon such information and belief alleges, that the net revenue which petitioner will receive from the sale of hydro-electric energy, as aforesaid, will be sufficient to more than pay the entire bonded and contract debt of petitioner, both principal and interest, leaving the annual cost of operation and maintenance of the irrigation and drainage works of petitioner only to be raised by petitioner by assessment or otherwise, which costs will constitute only a comparatively nominal charge upon the lands, and this, notwithstanding the fact that the major portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings was used in the construction of storage and other irrigation works without which irrigation on a large scale as now practiced in petitioner, or dependable [55] irrigation at all, would not be possible.

Wherefore, this answering creditor prays that the plan of composition proposed in or by the petition filed herein be disapproved and not confirmed

and that these proceedings be dismissed and that this answering creditor recover its costs herein.

CHAS L. CHILDERS,

Attorneys for West Coast
Life Insurance Company, El
Centro, California.

F. V. KEESLING,
Of Counsel. [56]

State of California,
City and County of San Francisco—ss.

Victor Etienne, Jr., being first duly sworn, deposes and says:

That he is an officer of West Coast Life Insurance Company, a corporation, the answering creditor named in the foregoing Answer and Objections, to-wit, The President thereof, and that he makes this verification for and on behalf of said corporation; that he has read the foregoing Answer and Objections and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated upon information or belief, and that as to those matters that he believes it to be true.

VICTOR ETIENNE, JR.

Subscribed and sworn to before me this 29th day of August, 1938.

[Seal] EDITH MORRISON,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 10, 1941. [57]

EXHIBIT "A"

1. Bond No.	2. Issue	3. Due Date	4. Principal amount of each bond	5. Unpaid interest coupons	
165	First	Jan. 1, 1934	\$1,000.00	July 1, 1933 &	Subsequent
44-45	Second	Jan. 1, 1939	1,000.00	July 1, 1933 &	"
624-625	First	Jan. 1, 1940	1,000.00	July 1, 1933 &	"
886-888	First	Jan. 1, 1942	500.00	July 1, 1933 &	"
948	First	Jan. 1, 1942	500.00	July 1, 1933 &	"
396-400	Second	Jan. 1, 1943	1,000.00	July 1, 1933 &	"
1141	First	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
1121-1122	First	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
1056	First	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
700	Second	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
7049	First	Jan. 1, 1956	1,000.00	July 1, 1933 &	"
6523-6526	First	Jan. 1, 1956	1,000.00	July 1, 1933 &	"
7441-7450	First	Jan. 1, 1957	1,000.00	July 1, 1933 &	"
7597-7600	First	Jan. 1, 1957	1,000.00	July 1, 1933 &	"
7196	First	Jan. 1, 1957	1,000.00	July 1, 1933 &	"
8065	First	Jan. 1, 1958	1,000.00	July 1, 1933 &	"
9040-9044	First	Jan. 1, 1959	1,000.00	July 1, 1933 &	"
9627-9631	First	Jan. 1, 1960	1,000.00	July 1, 1933 &	"
9410	First	Jan. 1, 1960	1,000.00	July 1, 1933 &	"
9947-9951	First	Jan. 1, 1960	1,000.00	July 1, 1933 &	"
10501-10510	First	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10596-10607	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10432-10435	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10733-10737	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
11122-11124	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10324-10325	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
11140	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10646	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
2400-2407	Second	Jan. 1, 1964	1,000.00	July 1, 1933 &	"

[Endorsed]: Answers and Objections of West Coast Life Insurance Company filed Sep. 1, 1938.

[58]

[Title of District Court and Cause.]

STIPULATION RELATING TO ANSWERS
OF FLORENCE MOORE, ET AL.

It is stipulated between appellants and appellees Merced Irrigation District that

I.

A verified answer and objections to plan was filed in this cause by Florence Moore, American Trust Company, as trustee under a certain agreement between R. S. Moore and American Trust Company, dated December 15, 1927, and as trustee under a certain agreement dated February 2, 1929, between Carrie W. Hunter and Harry A. Hine, Carrie W. Hunter and American Trust Company and Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1927, and John R. Dempster, being the owners and holders of bonds of the Merced Irrigation District, having an aggregate par value in the principal amount of \$105,000.00, as creditors of the Merced Irrigation District, by Messrs. Brobeck, Phleger and Harrison, their counsel, in which said creditors alleged in the first paragraph as follows: [59]

“I.

These respondents allege that Florence Moore is the owner of twenty bonds of Merced Irrigation District, second issue, bearing interest at the rate

of six per cent per annum, of the par value of \$1,000 each, which are numbered and have maturities as follows, that is to say: Nos. B-1972 and B-1981, both inclusive, due January 1, 1963; Nos. 1224 to 1227, both inclusive, and No. 1233, due January 1, 1963; and Nos. 2562 to 2566, both inclusive, due January 1, 1964;

That American Trust Company, as trustee under a certain agreement between R. S. Moore and American Trust Company, dated December 15, 1927, is the owner of fifteen bonds of Merced Irrigation District, first issue, bearing interest at the rate of six per cent per annum, of the par value of \$1,000 each, which are numbered and have maturities as follows, that is to say: Nos. 1362, 1363, 1364, 1377, and 1378, due July 1, 1946; Nos. 1237, 1238, 1239, 1240 and 1251, due July 1, 1945; and Nos. 2118, 2201, 2202, 2203 and 2204, due July 1, 1948;

That American Trust Company, as trustee under a certain agreement dated February 2, 1929, between Carrie W. Hunter and Harry A. Hine, Carrie W. Hunter and American Trust Company, is the owner of five bonds of Merced Irrigation District, first issue, second division, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, of the par value of \$1,000 each, all maturing January 1, 1952, which said bonds are numbered as follows, that is to say: Nos. M-3967, M-3969, M-3971, M-3972 and M-3973;

That Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1927, is the owner of sixty bonds of Merced Irrigation District, first issue, bearing interest at the rate of six per cent per annum, of the par value of \$1,000 each, which are numbered and have maturities as follows, that is to say: [60] Nos. 2133 to 2150, both inclusive, and Nos. 2284 and 2285, due July 1, 1948; Nos. 2599 to 2618, both inclusive, due July 1, 1949, and Nos. 3079 to 3094, both inclusive, and Nos. 3101, 3102, 3103 and 3104, due July 1, 1950.

That John R. Dempster is the owner of one bond of Merced Irrigation District, first issue, fourth division, Series 27, Serial No. 9220, bearing interest at the rate of six per cent per annum, of the par value of \$1,000.

That all of the principal of said bonds and all of the interest thereon accruing on and subsequent to July 1, 1933, is unpaid."

That in the remaining paragraphs of the said answer said creditors set forth substantially the same defenses to the petition for composition herein, as is set forth in the answer of creditors Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed that the petition herein be dismissed and that confirmation of the plan be refused and that the petitioner take nothing by these proceedings, and that the said

creditors have judgment against petitioner for costs and other proper relief; that said answer was filed more than ten days before the time set for hearing of this cause.

II.

That Claire S. Strauss, a creditor of Merced Irrigation District likewise answered in due time the petition herein and alleged that the said Claire S. Strauss was and is a bond creditor of the Merced Irrigation District affected by the plan of composition, owning bonds of said district Numbers 951 to 955 of series 11 of the first division of the first issue of bonds, maturing January 1, 1943, of the denomination of \$1000 each, together with coupons representing interest upon said bonds at 6% per annum, maturing semi-annually, commencing July 1, 1933, through January 1, 1938, and subsequently, and that the total amount of the coupons so [61] maturing amounted to \$1500 and setting forth the dates of presentation and registration of said coupons by the treasurer of the district, alleging said interest coupons to have been presented at periods from July 3, 1933, to January 14, 1938, substantially a short period of time after the respective maturities of the said coupons.

That said creditor further set forth defenses substantially as are set forth in the answer of Mary^a E. Morris, West Coast Life Insurance Company and Milo W. Bekins, et al., above, and prayed that petitioner take nothing by its petition and that it

be dismissed and that the creditors have judgment for reasonable attorney's fees and her costs of suit. This answer was filed by Messrs. Freidenrich & Selig and Kirkbride & Wilson, as counsel.

III.

That likewise in due time Pacific National Bank of San Francisco, a national banking association, through its counsel Hugh K. McKevitt, filed its verified claim and answer to the petition for confirmation of the plan of composition and in its said claim and answer set forth in paragraph I that the said bank is the owner of twenty-five first issue \$1000 6% bonds, issued by petitioner, setting forth the numbers of the bonds and their maturity dates in 1956 and 1959, and that it was the owner of 16 second issue \$1000 6% bonds, dated May 1, 1924, setting forth the numbers of the maturity dates as January 1, 1945, and alleging that all of said bonds bear interest at 6% payable semi-annually and that interest due July 1, 1933, and subsequently remains unpaid; in paragraph II the said creditor set forth a detailed description of the interest coupons maturing upon said bonds from July 1, 1933, semi-annually, through July 1, 1938, showing in each case the date of presentation of the coupons which were substantially the dates of maturity, said coupons being alleged to have been presented to the treasurer for payment on such dates; the total of the coupons [62] so due and presented, was the sum of \$13,530.00, exclusive if interest upon said coupons after maturity.

That in its said answer, the said creditors set forth substantially the same defenses as are set forth in the answers of Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed that the petitioner take nothing by its petition and that the petition be dismissed, and that the court determine that the plan of composition and the act of Congress enacting Chapter IX are unconstitutional and that the plan is unfair, unjust and inequitable, for costs of suit, and other proper relief.

IV.

That Minnie E. Rigby as executrix and Richard tum Suden as executor, of the last will of William A. Lieber, Alias, Deceased also in due time, through their counsel, Peter tum Suden, filed their verified answer and attached thereto their verified proof of claim, and in the answer alleged that said creditors of the Merced Irrigation District own three gold bonds of the Merced Irrigation District first issue, due 1947, in the sum of \$1000 each, bearing interest at 6% per annum, and five gold bonds of \$1000 each, of said district, due 1953, bearing interest at $5\frac{1}{2}\%$ per annum, each, and in said answer set forth substantially the same defenses as are set forth in the answers of Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed that the petition be dismissed and that said creditors have judgment for their costs; that said proof of claim set forth a detailed descrip-

tion of said \$8000 of gold bonds and a detailed description of the interest coupons detached therefrom, maturing July 1, 1934 and subsequently, and claiming a total indebtedness upon said bonds and coupons of \$10,275.00 as to which the interest coupon portion has matured and remains unpaid. [63]

V.

That R. D. Crowell and Belle Crowell also in due time filed an answer to the petition for composition herein, through their counsel Messrs. Chase, Barnes and Chase and set forth therein their ownership of bonds of the Merced Irrigation District affected by the plan as more fully described in their proofs of claim on file in this cause, and in said answer set forth substantially the same defenses as are set forth in the answers of Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed for dismissal of the petition and for costs and other proper relief.

VI.

That if the first, second, third, fourth, fifth, sixth, seventh, and eighth separate defenses of West Coast Life Insurance Company, or any of these, as set forth in their answer, be omitted from the printed record herein, it is further stipulated between appellants and appellee Merced Irrigation District that said separate defenses are substantially the same as have been set forth in the sepa-

rate defenses of creditors of the appellants Milo W. Bekins, et al.

That this stipulation may become a part of the record on appeal in this cause in lieu of the answers of Florence Moore, et al., Claire S. Strauss, Pacific National Bank of San Francisco, Minnie E. Rigby, et al., R. D. Crowell and Belle Crowell.

Dated: May 27, 1939.

CHAS L. CHILDERS

HUGH K. McKEVITT

CLARK, NICHOLS & ELTSE

CHASE, BARNES & CHASE

DAVID FREIDENRICH

PETER TUM SUDEN

BROBECK, PHLEGER & HARRISON

W. COBURN COOK

By W. COBURN COOK,

Attorneys for Appellants.

C. RAY ROBINSON. [64]

HUGH K. LAUDRAM,

DOWNEY, BRAND & SEYMOUR,

STEPHEN W. DOWNEY,

Attorneys for Appellees.

[Endorsed]: Filed June 1, 1939. [65]

[Title of District Court and Cause.]

ANSWER OF RESPONDENT,
MARY E. MORRIS

Comes now, Mary E. Morris, a respondent in the above entitled proceeding and a creditor of the above named Merced Irrigation District, and answers the petition on file herein and alleges, admits and denies as follows:

1.

She alleges that she is the owner of bonds of the above named debtor, Merced Irrigation District, in the principal amount of \$20,000.00 together with all interest accruing and falling due upon said bonds and accruing and falling due upon the interest coupons of said bonds. That the claim of the respondent against said debtor on account of said bonds and the interest thereon is set forth in detail in a claim which the respondent has filed or is about to file in the above entitled proceeding. [66] That a true copy of said claim is hereto attached, marked Exhibit A, hereby referred to and by such reference made a part hereof. Respondent alleges that all of the facts and statements set forth in said claim are true.

2.

That the above entitled Court is without jurisdiction of the subject matter of this proceeding.

3.

That the above entitled Court has no jurisdiction to confirm or enforce the plan of composition of the bonded indebtedness or of the indebtedness of said debtor, which plan is referred to in the petition herein. That the above entitled Court has no jurisdiction to conform or enforce any plan of composition of any of the bonded indebtedness of said debtor.

4.

That on April 19, 1935, the above named debtor, Merced Irrigation District, filed in the above entitled Court its petition denominated "Petition for Debt Readjustment". That said petition was numbered 3907 in Bankruptcy in the files of said Court. That said petition described in detail the same bonded indebtedness of the said district which is described in the petition in this case and said petition prayed that the above entitled Court should make its order confirming the said plan of debt readjustment and that said Court should make the same effective against the holders of all of the bonded indebtedness referred to in said petition. That the plan for debt readjustment as described in said petition was the same as the plan of composition of bonded indebtedness described in the petition of the said debtor filed in this case.

That the plan in each case provided for the payment of the same amount upon, or the satisfaction in the same way of, all of the outstanding and un-

paid bonded indebtedness of the said debtor district. [67]

That the petition in said other cause described in detail the bonded indebtedness of said district exactly as the petition in this case describes the same. That Paragraph II of said other petition alleges:

“That petitioner is unable to meet its debts as they mature and it desires to effect a plan of readjustment of its debts.”

That Paragraph II of the petition herein pleads:

“That the petitioner is unable to meet its debts as they mature.”

and then further along the paragraph alleges:

“That by reason of the facts aforesaid, petitioner desires to effect a plan of composition of its outstanding bonded indebtedness.”

which said bonded indebtedness is particularly described in said paragraph. That the description of the bonded indebtedness in said respective Paragraphs II is the same.

That the petition in this case describes the conditions which the petition in the other case alleges created the need for the enforcement of a plan of debt readjustment, except that the petition in this case alleges that the said conditions have continued to exist.

That the bonds and coupons of the debtor district which the respondent in this case holds were owned and held by her at the time of the filing of said petition for debt readjustment on April 19, 1935. That respondent has ever since continued to own and hold said bonded indebtedness. That the said other proceeding was directed against this respondent and that it was the purpose of said other proceeding to enforce the plan of debt readjustment therein described and which said plan is described in the petition in this case against the respondent and to compel and put into effect a readjustment of the bonded indebtedness so held by this respondent in accordance with the plan of debt readjustment or plan of composition hereinbefore referred to. [68]

That this respondent intervened in said other proceeding. That upon appearing in said other proceeding this respondent moved to dismiss the petition in said other proceeding upon the ground that the above entitled Court had no jurisdiction of the subject matter of said petition and no jurisdiction or authority to confirm said plan of debt readjustment or make any order purporting to put the same into effect as against the respondent. That the above entitled Court denied the said motion to dismiss to which ruling the respondent excepted. That in her petition in intervention in said cause the respondent expressly alleged that she did not waive any of the objections set forth in her motion

to dismiss. That she pleaded in detail that the said debtor was not bankrupt or insolvent or unable to meet its debts as they matured; that its plan is unfair, that its enforcement would confiscate in whole or in part the bond obligations of said debtor district owned by respondent and would operate to permit the taking or damaging of the property of the respondent without due process of law and in violation of the 5th Amendment of the Constitution of the United States. That the said petition of respondent alleged facts in detail which are in substance hereinafter alleged in this Answer and which show that the plan of debt readjustment or plan of debt composition of the debtor was and is unfair and discriminatory.

That said other cause was tried by the Court and that the above entitled Court did on March 4, 1936, make and enter its final decree ordering that said plan of debt readjustment be confirmed and describe said plan of debt readjustment as it was described in said petition in said other cause. That the bonded indebtedness referred to in said decree included all of the bonded indebtedness of said district owned and held by said respondent, and said decree provided that said bonded indebtedness should be readjusted exactly as it is proposed in the petition [69] in this cause the same shall be readjusted or composed.

That on March 28, 1936, respondent duly filed her petition for an order allowing an appeal from

said decree last referred to and on March 30, 1936, an order was duly given and made by the Honorable George Cosgrave, United States District Judge, allowing the appeal so prayed for. That in the assignments of error filed with the said petition for an order allowing appeal it was recited and specified that the Court erred in not holding that said Section 80 of said Federal Bankruptcy Act was unconstitutional under the United States Constitution and not within the power of the Federal Government to establish a uniform system of bankruptcy throughout the United States. That said assignments of error further specified that the putting into effect or confirming said plan of debt readjustment was void and illegal interference with the exercise of the sovereign governmental powers of the state conferred upon said debtor district. That said assignments of error further specified that the Court had erred in determining that it had jurisdiction over the subject-matter of the petition for said plan of debt readjustment or that it had jurisdiction to enforce the same or that it had jurisdiction over said district or that it had jurisdiction over the respondent, the appellant in said cause. That upon the making of the order allowing said appeal, citation was duly issued to said Merced Irrigation District and served. That said appeal was in all respects duly perfected.

That said appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit.

That there was some question as to whether the said appeal was of such a nature as that it should be allowed by the United States District Court or a Judge thereof or allowed by the said United States Circuit Court of Appeals. That petition was also filed in said United States Circuit Court of Appeals for an order allowing an appeal [70] from said decree of said United States District Court and that on April 6, 1936, an order was duly given and made by the said United States Circuit Court of Appeals allowing said appeal. That said other cause was in all respects duly appealed to the said United States Circuit Court of Appeals and that all the parties to said cause appeared in said Court on said appeal.

That on March 17, 1937, the appellant, together with other persons appealing in said other cause, filed in said Circuit Court of Appeals a motion to dispense with the printing of the record and to have the cause advanced on the calendar and submitted for judgment of reversal. That said motion was duly served and duly heard. Said motion was upon the ground that before the taking of any evidence on said other trial, all the objecting bondholders, including respondent, had objected to the introduction of any evidence on the ground that the United States District Court was without jurisdiction to entertain said cause or to hear or determine the same and that it was conceded by the said debtor district that the jurisdiction of the Dis-

trict Court depended on Sections 78, 79 and 80 of the Federal Bankruptcy Act enacted May 24, 1934, and that on May 25, 1936, the United States Supreme Court had, in the case of Ashton et al. v. Cameron County Water Improvement District No. One, 298 U. S. 513, determined that the Act of Congress last referred to was unconstitutional and void and that the District Court was without jurisdiction in said cause.

That on April 12, 1937, the said United States Circuit Court of Appeals made its order upon the said motion reciting that said motion should be granted and that a decree should be filed and entered reversing the said decree of the United States District Court and remanding the said cause to the United States District Court with directions to dismiss the same. That on [71] April 12, 1937, the said United States Circuit Court of Appeals duly gave, made and entered its order, a copy of which is hereto attached, marked Exhibit "B", hereby referred to and by such reference made a part hereof. That said debtor district, following the entry of said decree last referred to, applied to the United States Supreme Court for a writ of certiorari to review the said decree of the said United States Circuit Court of Appeals. That the Supreme Court on duly gave and made its order denying said application.

That said order of said United States Circuit Court of Appeals was final before the commence-

ment of this action. That mandate duly issued pursuant to the said decree of the said United States Circuit Court and was filed in the above entitled Court on _____ and that pursuant to the said mandate the above entitled Court did on _____ duly give, make and enter its decree in said other cause dismissing said cause pursuant to said writ of mandate and said last named decree was long since final.

That by virtue of the said prior judgments and adjudication in said other proceeding, which said judgments and adjudication are hereinbefore referred to, said debtor district is barred and estopped from claiming that the above entitled Court has any jurisdiction over the petition filed herein or over the subject-matter of said petition or over the said debtor district or over the respondent or over the bonds and coupons owned by respondent and which were issued by said district and which are referred to in the petition herein.

5.

Herein the Reconstruction Finance Corporation, a corporation, mentioned in the petition, is referred to as the R. F. C.

6.

Respondent denies that the said district is bankrupt or [72] insolvent or unable to meet its debts or its bond obligations as the same mature.

Respondent further alleges:

(a) That said district is already refinanced through the fact that it has acquired over 90% of its bonds with all unpaid coupons thereof at about 50 cents on the dollar of what was due thereon, counting the principal of and the coupons of such bonds.

(b) That the petition herein mentions that funds were obtained by the said district from the said R. F. C. or were advanced by the said R. F. C. for the purpose of acquiring title to the bonds of said district of those particular issues which are mentioned in the petition herein and further that over 90% of the bonds of said issues were taken up through said moneys so obtained from said R. F. C.

Respondent alleges that any moneys obtained from the said R. F. C. and which amounted to approximately \$8,000,000.00 were loaned by the said R. F. C. to said district. That the title to said moneys passed to said district and that all of the bonds of said district, comprising said amount of over 90% were acquired through use of the money owned by said district which was borrowed from the said R. F. C. and through the use and the expenditure of other funds of said district which were not borrowed. The plan of said district to acquire its bonds was called the cash offer plan.

That it was understood and agreed in the contract or agreement whereby the aforesaid loan was made by the R. F. C. to said district that before any amount would be advanced to or for the use

of said district by the said R. F. C. those bondholders who were willing to accept the said cash offer plan would deposit their bonds with the coupons thereof falling due on or after July 1, 1933, with certain depositaries agreed upon [73] by the said R. F. C. and the said district and that thereby it would be determined whether sufficient of the bonds of said district would be deposited by bondholders who were willing to accept said cash offer plan in order to have the said district refinanced in accordance with what the said R. F. C. deemed a proper basis. That following the making of said agreement or arrangement the holders of over 90% of the outstanding bonds of said district of the issues mentioned in the petition herein deposited their bonds with the coupons thereof falling due on and after July 1, 1933, with the said agreed depositaries for transfer under said cash offer plan.

That thereupon the said R. F. C. agreed to provide, advance and loan to said district a part of the funds which would be paid to bondholder in the carrying out of said cash offer plan. That it was a condition of the agreement made by the said R. F. C. that said district would pay out of said loan for each bond of said district together with the coupons of such bonds falling due on and after July 1, 1933, but the sum of 51.501% of the face amount of the principal of the bond, whereas the full price to be paid to each bondholder would be 51.501% of said principal, plus 4% per annum

of said amount from the time the bonds taken up were deposited under agreement to take said amount of 51.501% of principal and the actual payment of said amount of 51.501% of principal. That it was further understood and agreed between the R. F. C. and the said district that said district would pay the expenses of carrying out said refinancing scheme of taking up the bonds of said district and would pay in full all coupons of bonds of said district maturing prior to July 1, 1933.

That to any extent that the allegations of the petition are contrary to what is set forth in this subdivision of Par. 6 of this answer, the matter so set forth is untrue.

That the agreement last hereinbefore referred to was the [74] agreement which was in fact carried out in the taking up of the bonds of said district amounting to over 90% thereof. That of the funds used in carrying out said cash offer plan, not more than 51.501% of the face amount of the principal of the bonds taken up was advanced and loaned by the said R. F. C. That the said district paid to each bondholder who transferred his bonds under said cash offer plan interest at the rate of 4% per annum on said 51.501% of the principal of the bonds of the bondholder from the time of the deposit of his bonds until the same were taken up and transferred under said cash offer plan and that the total paid out by said district on account of said interest amounted to several dollars in the case of

each bond taken up and amounted in all to about \$250,000.00. That the said district did further in pursuance of the said agreement between the said R. F. C. and said district pay out over \$100,000.00 constituting the expenses of carrying out said refinancing scheme of taking up the bonds of said district. That said expenses were necessarily incurred and that but for the incurring of said expenses said cash offer plan could never have been consummated. That it was a fact and it was known to both said R. F. C. and said district that the incurring and paying of said expenses was a necessary expense of the acquisition of said bonds. That furthermore said district did, pursuant to said agreement, pay in full all of the coupons of bonds of said district which were unpaid and which had matured prior to July 1, 1933, and that these coupons aggregated many thousands of dollars.

(c) That the said R. F. C. was notified before it disbursed any moneys for the benefit of said district, that said district was to contribute part of the moneys which were to be paid to bondholders for the surrender of their bonds. That the said R. F. C. was, before it provided any moneys for the taking up of the bonds of the district, supplied with copies of the resolutions [75] of the Board of Directors of the district showing what the district proposed to pay to bondholders for the surrender of their bonds, and that said resolutions showed that the only money which the R. F. C. was to pro-

vide for the taking up of the bonds of the district was 51.501% of the unpaid principal of any bond, regardless of the interest accruing thereon and that the district was undertaking to pay towards the expense of the acquisition of its bonds, the interest, the expenses and additional amounts set out in subdivision (b) of this paragraph.

(d) Respondent alleges that at most the said R. F. C. is a mere pledgee of the bonds which were taken up by said district under said cash offer plan and that all that is due, owing or unpaid from said district to the said R. F. C. is the amount loaned by said R. F. C. to said district. Said R. F. C. is not a bondholder of said district.

(e) Said irrigation district had no authority to enter into a contract with the R. F. C. through which the R. F. C. and the said district would jointly provide moneys to acquire the bonds of said district and which would provide that upon so acquiring the bonds of said district the R. F. C. should at its election or otherwise be considered the absolute owner of the bonds acquired.

Article IV, Section 31 of the State Constitution prohibits an irrigation district from making a gift of its funds or of public property. The bonds which were acquired from the bondholders through the use of moneys borrowed from the R. F. C. and moneys provided by the district were worth more than what was paid for them. That unless the said bonds were worth more than the part of

the price for such bonds contributed by the R. F. C. the arrangement for the taking up of such bonds was illegal and constituted a fraud upon the district and all of its other creditors. That as a matter of fact, before the R. F. C. loan was [76] made, an appraisalment was made of the security for the loan proposed to be made by the said R. F. C. and it was determined by the said R. F. C. and the district that the security for such loan exceeded the amount of loan by approximately 30%.

The law prohibited said district from giving its money or property to anyone.

The Civil Code prohibits forfeiting without foreclosure of property pledged as security for a debt.

7.

That the plan of debt readjustment which the said district seeks to have enforced by its petition on file herein is discriminatory and unfair as to the respondent for the following reasons:

Said plan does not undertake to make any provision for the paying of interest to the respondent upon her coupons and bonds that have matured which will in any way compensate her for that delay in payment represented by the period between the adoption of the present plan of the district and the times of payment to those bondholders of the district who accepted the cash offer plan. That approximately two years have passed since the district began to put into effect its cash offer

plan and to pay out to bondholders who accepted said cash offer plan the consideration for their bonds. That it has been duly determined that the federal proceeding conducted by said district was void. That the interest and principal due to respondent, Mary E. Morris, upon her bonds aggregates large amounts. The fact that payment to the said Mary E. Morris has been delayed is not taken into consideration at all in the plan of said district.

8.

The plan of said district set out in the petition herein is unfair, discriminatory and illegal for the following reasons:

That since the loan was made by the R. F. C. to said district [77] whereby over 90% of the bonded indebtedness of said district was taken up as hereinbefore set forth, the said district had paid to the said R. F. C. interest at 4% per annum upon the amounts loaned by the said R. F. C. to the said district. That in making said payments said district has claimed that the loan so made was different in character from money borrowed through the issuance of refunding bonds. That said district has but a limited capacity to pay its indebtedness, including its bonded indebtedness. That under the law as it stood when the bonds of said district were issued the capacity of said district to pay debts was allocated to the paying of general expenses of said district and the meeting of

the bonds of said district, and there was no provision in the law whereby refunding bonds of said district could be preferred as to security over original bonds of said district. That said district has claimed the right to treat the obligation to pay the said loan to the said R. F. C. as a preferred obligation notwithstanding the sole purpose thereof was to fund or refund existing bonded indebtedness of said district and the said district has continuously since the loaning of moneys by the said R. F. C. to said district devoted all of the moneys raised in said district by taxation other than for general expense to paying interest upon the said R. F. C. loan. That said district has levied taxes for the raising of said moneys so paid and that upon the payment of said taxes the moneys received have been placed in a special fund and said fund has been devoted exclusively to the payment of interest on the said R. F. C. loan. That in fact the moneys so raised constituted a part of the bond fund of said district and said moneys were payable upon the bonds and coupons of said district in the order of presentation thereof. That at least no greater proportion of said money was payable on the said R. F. C. loan than was payable upon the outstanding bonds and coupons of the bond issues of said district. That by this proceeding this district seeks to sanction the illegal acts and conduct [78] of the said district and seeks to have the bonded indebtedness of said district outstanding and which was not taken up under said cash offer

plan treated as if the same were in full effect and without any credit thereon. That in any event said district should be compelled to pay upon its outstanding bonds held by the dissenting bondholders the same proportion of what is due to them as was paid to the said R. F. C.

9.

That said plan of said district is further unfair and discriminatory in this: That when the said district first defaulted in the paying of bond interest it had outstanding warrant indebtedness amounting to \$100,000.00 or thereabouts. And when said district first proposed to obtain from the R. F. C. a loan to adjust its bonded indebtedness it had outstanding a large amount of warrant indebtedness and a large amount of indebtedness of the same class as warrant indebtedness. And that continuously since the time last referred to said district has had outstanding a large amount of indebtedness of the same kind as warrant indebtedness; that is to say, liquidated indebtedness. That all said indebtedness was and is payable by taxes levied upon property within said district in the same manner in which bonds of said district are payable and there was and is no essential difference between bonded indebtedness and such other indebtedness of said district. That no reason whatsoever has existed or exists for singling out the bondholders of said district and seeking to compel

them to accept less than the amount due upon their bonds in settlement of their bond obligations while at the same time refraining from impairing or reducing such other indebtedness in any manner whatsoever. That while such other indebtedness has recently been greatly reduced by said district, this was done to the detriment of the bondholders of said district and through the levy of taxes which could otherwise have been levied [79] for bond service and for the payment of bonded indebtedness of said district. That said plan makes no mention whatsoever of the vast amount of moneys paid out by said district on such other indebtedness. That said plan seeks to prefer holders of such other indebtedness over the holders of the bonds of said district.

10.

That said district's plan is unfair and discriminatory for the following reasons: That said district is and at all times it was located wholly in Merced County and that at all times herein mentioned other governmental subdivisions were located wholly or in part within said district. That when said district adopted its plan of debt readjustment and at all times since said district first defaulted in meeting its bond obligations, all of said other government subdivisions have had general and bonded indebtedness in large amounts payable in substantially the same way as bonds of said district are payable, to-wit, through the levy of

taxes upon land within said irrigation district. That the taxes levied and the tax liens created in favor of said other governmental subdivisions are merely on a parity with taxes and tax liens of said irrigation district. That all the indebtedness of said subdivisions and of said district is of substantially the same character and payable through substantially the same means and that to destroy all of the interest upon the bonds of said irrigation district and to reduce the bonded indebtedness of said irrigation district 25% involves the sacrifice of the property of the bondholders of said district and for the benefit of and to increase the value of the other indebtedness payable by taxation of the land in said district. That said plan of debt readjustment of said district does not propose to alter in any respect such other indebtedness referred to, but the plan of said district proposed [80] to prefer such other indebtedness over the bonded indebtedness of said irrigation district. Said bonded indebtedness of said county and said other governmental subdivisions has at all times herein mentioned aggregated \$150,000.00 or thereabouts.

11.

That the said plan of the said district is further discriminatory and unfair as to respondent, Mary E. Morris, for the following reasons: That when the plan of debt readjustment of this district was originated and ever since that time banks, lending institutions and individual money lenders had

loaned many thousands of dollars upon the lands within said irrigation district upon mortgages and deeds of trust. That in many instances owing to the depression interest was not paid upon these securities and that the value thereof was greatly reduced. That the plan of debt readjustment of the said district does not take into consideration and has never taken into consideration the private loans referred to although the payment thereof was secured by mortgages and deeds of trust upon the very land that comprised the security for the bonded indebtedness of said irrigation district. That the right to have taxes levied to secure such bonded indebtedness was superior to the right created by such mortgages and deeds of trust. That the plan of debt readjustment of said district has always provided for the sacrificing of the bondholders of said district for the benefit of the said secured loans hereinbefore referred to.

12.

Said plan of said district is further unfair and illegal in this:

Said district does not propose to make any restoration of the moneys which said district misappropriated and used by said district and which should have been paid to the bondholders of said district, including respondent. [81]

Said district comes into this Court with unclean hands.

That said district's plan contains no provision for the return to the bond fund of said district of the moneys so illegally misappropriated and used by the said district and its officers as alleged herein, but the plan of said district proposes to perpetuate, sanction and to ratify the illegal acts of said district and its officers in using the funds of said district as said district and its officers might elect and regardless of the title or right thereto in partially completing said plan.

That the said plan seeks to treat all of the bonds and coupons of bonds of said district held by respondent as if the same were wholly due, owing and unpaid and subject to readjustment set forth in the petition herein. That however the respondent is entitled to have paid in full such of her bonds and such of the coupons of her bonds as have matured, together with interest on such bonds and such coupons from the date of presentation thereof at the rate of 7% per annum.

That this arises from the misappropriation and misapplication of the moneys constituting a part of the bond funds of said district which were taken and used by said district as herein set out.

That said district discontinued the paying of interest upon its bonded indebtedness as set forth in the petition herein. That it paid no interest coupons accruing upon its bonds after the coupons which fell due on Jan. 1, 1933. That, however, said district had prior to said date levied taxes for

bond service and after said date said district continued to levy taxes for bond service and as a result of taxation said district received large amounts of money which were paid into or which belonged to the bond fund of said district. That said moneys became subject to payment upon maturing coupons and bonds of said district in the order of presentation thereof and as hereinbefore [82] alleged, respondent caused her matured bonds and the matured coupons of her bonds to be duly and promptly presented to the treasurer of said district for payment and to be duly registered for non-payment and as hereinbefore alleged each of such matured bonds and matured coupons has drawn interest at 7% per annum from the date of the presentation thereof to the treasurer of said district for payment as hereinbefore alleged.

That instead of devoting the moneys in the bond fund of said district to the payment of the coupons of the bonds of said district, including respondent's coupons, said district simply assumed that it could proceed to use, and it did in fact proceed to use, moneys of the bond fund of said district for the purpose of paying warrant indebtedness, the expense of the plan of buying up bonds of said district and in part payment for such bonds under the refinancing plan of said district. That the moneys so diverted from the bond fund of said district and so misapplied aggregated over \$400,000.00.

That said R. F. C. knew of the aforesaid misuse of the moneys of the bond fund of said district when it received in pledge the bonds of said district which it now holds, and that the said R. F. C. at all times knew that the moneys of the bond fund of said district had been so used in the acquisition of the bonds which it holds. That the said R. F. C. cooperated with said district in the misapplication and the misuse of the bond fund moneys of said district as hereinbefore set forth. That this respondent is entitled to have the amount of her unpaid coupons charged on all of the security which the said R. F. C. holds. That she is entitled to have all of her unpaid coupons and bonds paid in full. That the district should be denied all relief herein until it has restored the moneys which it has misappropriated from its bond fund. That said district has no right to consider that it should have the amount due upon the matured bonds and [83] coupons held by this respondent reduced or considered discharged in part.

13.

Respondent denies that the district's plan as set out in its petition has been accepted in writing by the holders of as much as two-thirds in principal amount of each class of the indebtedness affected by the said district's plan.

Respondent alleges that the R. F. C. has no such interest in the bonds which it holds as qualifies it

to give its consent to said plan in accordance with the said Act of March 30, 1937, referred to in the petition, but that said district owns the bonds held by said corporation.

14.

That the State of California has not consented to this proceeding. That the State Act relied on is insufficient to confer said consent. A judicial proceeding which binds only at the option of an adversary or permits endless renewal does not accord due process of law, but is a mere system of coercion.

15.

Said State Act confers conditional consent only and is incomplete.

16.

Respondent further alleges that the Act providing for this proceeding was beyond the power of Congress to enact and is invalid and unconstitutional for the following reasons:

(a) It both directly and indirectly provides for impairing the obligation of the contracts represented by respondent's bonds and coupons in violation of Sec. 16 of Article I of the State Constitution and Subdivision 1, Sec. 10, Article I of the Federal Constitution. By the proceeding referred to the obligations of the bonds and coupons held by respondent will be materially altered, impaired and changed. Said Act is not within the bankruptcy powers of Congress. [84]

(b) It provides for the taking of the property of respondent without due process of law and without providing compensation therefore and in violation of the 5th Amendment to the Federal Constitution. Said act attempts the confiscation of respondent's bonds.

(c) It attempts to make the finality of a judgment of the United States District Court dependent upon the decision of the debtor district and ignores the provision that the Federal Constitution and laws made under it are the supreme law of the land and that the authority of federal courts functioning under any valid act conferring jurisdiction are supreme.

(d) It provides for a judgment, the date of finality of which or the time for appeal from which cannot be determined.

17.

The State act which attempts to sanction this proceeding is void for all the reasons hereinbefore set out in paragraphs 14, 15 and 16 hereof.

18.

Respondent has no information or belief sufficient to enable her to answer the allegations of the petition herein to any extent other than as she has hereinbefore answered, and placing her denials upon that ground, she denies all and singular the remaining allegations of the petition which have not been specifically answered herein.

Wherefore, respondent prays that the Court shall deny to the petitioner all relief and that the Court shall make such other and further order as is proper.

Dated: September 1, 1938.

CLARK, NICHOLS & ELTSE,

Attorneys for Respondent,

Mary E. Morris. [85]

State of California,
County of Alameda—ss.

Mary E. Morris, being first duly sworn, deposes and says:

That she is the respondent named in the within entitled Answer; that she has read the said answer and knows the contents thereof and that the same is true of her own knowledge except as to matters which are therein stated upon her information or belief and that as to such matters she believes the same to be true.

MARY E. MORRIS.

Subscribed and sworn to before me this 1st day of September, 1938.

[Seal]

EDITH CHING,

Notary Public in and for the County of Alameda,
State of California. [86]

EXHIBIT "A"

[Title of District Court and Cause.]

CREDITOR'S CLAIM

CLAIM OF MARY E. MORRIS AGAINST THE
ABOVE NAMED DEBTOR

State of California,
County of Alameda—ss.

Mary E. Morris, being first duly sworn deposes and says:

1. That affiant, Mary E. Morris, owns and holds bonds referred to in the petition in the above entitled composition proceeding and which are subject to said proceeding and which said bonds were issued by the above named debtor, Merced Irrigation District, and that she owns and holds certain coupons of said bonds.

2. That all of said bonds belong to the first issue of the bonds of said District. [87]

3. That the following Schedule shows the division to which said bonds belong, the numbers of the said bonds, and the due dates and the amounts of said bonds:

SCHEDULE

1st Division Numbers of Bonds	Series No.	Due Dates	Amounts
Bond No. 319	4	Jan. 1, 1936	\$1,000.00
Bond No. 394	5	Jan. 1, 1937	1,000.00
Bond No. 474	6	Jan. 1, 1938	1,000.00
Bond No. 559	7	Jan. 1, 1939	1,000.00
Bond No. 649	8	Jan. 1, 1940	1,000.00
Bond No. 744	9	Jan. 1, 1941	1,000.00
Bond No. 943	10	Jan. 1, 1942	500.00
Bond No. 944	10	Jan. 1, 1942	500.00
Bond No. 1052	11	Jan. 1, 1943	1,000.00
Bond No. 1053	11	Jan. 1, 1943	1,000.00
Bond No. 1165	12	Jan. 1, 1944	1,000.00
4th Division Numbers of Bonds			
Bond No. 8296	26	Jan. 1, 1958	1,000.00
Bond No. 8297	26	Jan. 1, 1958	1,000.00
Bond No. 8298	26	Jan. 1, 1958	1,000.00
Bond No. 8299	26	Jan. 1, 1958	1,000.00
Bond No. 8300	26	Jan. 1, 1958	1,000.00
Bond No. 9289	27	Jan. 1, 1959	1,000.00
Bond No. 9290	27	Jan. 1, 1959	1,000.00
Bond No. 9291	27	Jan. 1, 1959	1,000.00
Bond No. 9292	27	Jan. 1, 1959	1,000.00
Bond No. 9293	27	Jan. 1, 1959	1,000.00
			<hr/>
			\$20,000.00

4. That the said Bond No. 319 which so matured on January 1, 1936, was duly presented to the treasurer of said District for payment on February 28, 1936, and that at said time said treasurer refused to pay said bond upon the ground that said district did not have sufficient funds to pay said bond and that at the time of such refusal and on said date of February 28, 1936, said treas-

urer registered said bond for non-payment. That the whole amount of said bond, to-wit, the sum of \$1,000.00, remains due, owing and unpaid from said District to affiant together with interest thereon at the rate of 7% per annum.

5. That the said Bond No. 394 which so matured on January 1, 1937, was duly presented to the treasurer of said District for [88] payment on June 10, 1937, and that at said time said treasurer refused to pay said bond upon the ground that said District did not have sufficient funds to pay said bond and that at the time of such refusal and on said date of June 10, 1937, said treasurer registered said bond for non-payment. That the whole amount of said bond, to-wit, the sum of \$1,000.00, remains due, owing and unpaid from said District to affiant together with interest thereon at the rate of 7% per annum.

6. That the said Bond No. 474 which so matured on January 1, 1938, was duly presented to the treasurer of said District for payment on Jan. 2, 1938, and that at said time said treasurer refused to pay said bond upon the ground that said District did not have sufficient funds to pay said bond and that at the time of such refusal and on said date of Jan. 2, 1938, said treasurer registered said bond for non-payment. That the whole amount of said bond, to-wit, the sum of \$1,000.00, remains due, owing and unpaid from said District to affiant

together with interest thereon at the rate of 7% per annum.

7. That each of said bonds provided that the said debtor District would pay interest on the principal amount thereof at the rate of 6% per annum semi-annually on the first day of July and the first day of January from time of issuance to and including the date of maturity of such bond. That each interest installment so agreed to be paid upon a bond was represented by a coupon in the sum of \$30.00 and that in such coupon the said debtor District agreed to make payment of semi-annual interest as aforesaid upon the bond to which the coupon was attached and is the amount of the coupon. All said interest coupons were originally attached to the respective bonds. That affiant owns all of the coupons representing interest maturing on all of the aforesaid bonds which she owns, beginning with the coupons thereof maturing on July 1, 1933, and including all subsequent coupons. [89] That all of said coupons which have matured have been detached but are owned and held by affiant. That the aforesaid coupons which have not as yet matured are still attached to the respective bonds and are owned and held by affiant.

That after said coupons matured they were duly presented to the treasurer of said District for payment and at the time of the presentation thereof the said treasurer refused to pay such coupons upon the ground that said District did not have

funds sufficient to pay the same and that in each case at the time coupons were so presented and payment thereof refused the said coupons were registered for non-payment.

That the number of said coupons so owned and held by affiant and the dates of maturities of such coupons and the dates of the registration thereof for non-payment as aforesaid and the total amounts of said coupons are as shown in the following schedule:

SCHEDULE

No. of Coupons	Date Due	Date Registered	Amount Due
20	July 1, 1933	July 27, 1933	\$600.00
20	Jan. 1, 1934	Apr. 9, 1934	600.00
20	July 1, 1934	July 1, 1934	600.00
20	Jan. 1, 1935	Jan. 1, 1935	600.00
20	July 1, 1935	Dec. 17, 1935	600.00
20	Jan. 1, 1936	Feb. 18, 1936	600.00
19	July 1, 1936	July 1, 1936	570.00
19	Jan. 1, 1937	June 10, 1937	570.00
18	July 1, 1937	July 2, 1937	540.00
18	Jan. 1, 1938	Jan. 2, 1938	540.00
17	July 1, 1938	July 1, 1938	510.00
			<hr/> \$6330.00

8. That as set forth in the foregoing schedule the total of the said coupons other than the interest accruing thereon amounts to \$6330.00 and that said amount is wholly due, owing and unpaid from the debtor District to affiant, and that in addition interest is due, owing and unpaid upon each afore-

said coupon from the date of maturity thereof at the rate of 7% per annum.

That likewise interest is due, owing and unpaid on said [90] three bonds which have matured and which are in the principal sum of \$1,000.00 in each case from the date of maturity of the bond.

That in the event interest is allowable upon the said bonds and the said coupons only from the date of presentation and registration, then the interest claimed is interest at 7% from date of registration in the case of each bond and in the case of each coupon.

That affiant claims interest from the date of maturity of each bond and each coupon because before the maturity of any of the aforesaid bonds or coupons the debtor district had determined and all of its officers had determined that nothing would be paid on any of the bonds or coupons of said district even though the same might be presented to the treasurer of said district for payment and even though funds might be on hand with which to pay the same.

That moreover, said district and its officers have kept the bond fund of said district empty by making other uses of the moneys that would otherwise be available for application upon bonds and that presentation of any of the aforesaid bonds or coupons for payment would have been futile.

That said district and its directors and other officers have taken from the bond fund of said dis-

trict large amounts which but for such taking would have been available to make payments upon the matured bonds and matured coupons of affiant. That they have juggled the bond fund moneys of said district and used the same to pay warrants of said district and that the said debtor district should be compelled not only to pay interest in accordance with the terms of said bonds but also interest upon coupon interest that has matured.

That affiant claims all of the principal and all of the coupon interest and all of the interest on principal and all the interest upon coupon interest to which she may be entitled under the facts.

MARY E. MORRIS

Subscribed and sworn to before me this 1st day of September, 1938.

[Seal]

EDITH CHING

Notary Public in and for the County of Alameda,
State of California. [91]

EXHIBIT "B"

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 8165

REED J. BEKINS, et al., etc.,

Appellants,

vs.

MERCED IRRIGATION DIST., et al.,

Appellees.

DECREE.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and on motion of appellants for reversal of decree herein, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the motion be, and hereby is granted, and that the decree of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellants and against the appellees, and that this cause be, and hereby is remanded to the said District Court with directions to dismiss the cause. [92]

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellants recover against the

appellees for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered April 12, 1937.
Paul P. O'Brien, Clerk.

[Endorsed]: Answer of Respondent, Mary E. Morris. Filed Sep. 2, 1938. [93]

[Title of District Court and Cause.]

STATEMENT OF CLAIM AND INTEREST OF
WEST COAST LIFE INSURANCE COMPANY

West Coast Life Insurance Company, a corporation, who has filed herein its Answer and Objections, to which Answer and Objections reference is hereby made and without waiving any defense therein or which may hereafter be set out, but insisting upon the same, makes this further verified statement of its claim and interest herein and shows:

That West Coast Life Insurance Company is now and since long prior to the filing of the petition herein has been, a creditor of the petitioner herein, to-wit: the owner and holder of certain of the issued, outstanding and unpaid bonds of petitioner in the principal amount of \$100,000.00, together with unpaid interest coupons attached or originally attached to said bonds, both said bonds and said interest coupons being hereinafter more fully referred to; that by the terms of each of said bonds so held and owned by this claimant, petitioner

promised and agreed to pay to bearer the principal amount thereof on the due date therein named, together with interest at the rate of 6% per annum, payable semi-annually on the 1st day of January and the 1st day of July of each year after the date of said bond until the due date thereof, and that each of said semi-annual interest payments on each of said bonds is represented by a coupon [94] attached or originally attached to the bond to which it relates, by the terms of which the petitioner promised and agreed to pay to bearer on the date therein named, the amount of interest represented thereby.

That the principal amount of said bonds so owned and held by this claimant and unpaid is \$100,000.00.

That the amount of past due, presented and unpaid interest coupons so held and owned by this claimant and originally attached to the bonds so held and owned by this claimant and above referred to is \$32,730.00 together with interest thereon at the rate of 7% per annum upon \$3,000.00 thereof from July 1, 1933; upon \$3,000.00 thereof from January 1, 1934; upon \$2,970.00 thereof from July 1, 1934; upon \$2,970.00 thereof from January 1, 1935; upon \$2,970.00 thereof from July 1, 1935; upon \$2,970.00 thereof from January 1, 1936; upon \$2,970.00 thereof from July 1, 1936; upon \$2,970.00 thereof from January 1, 1937; upon \$2,970.00 thereof from July 1, 1937; upon \$2,970.00 thereof from January 1, 1938 and upon \$2,970.00 thereof from July 1, 1938.

That all of said interest coupons past due and unpaid as above referred to have been detached from the said bonds to which they relate and are held and owned by this claimant.

That all interest coupons appertaining to the respective bonds so held and owned by the claimant as above set out and to mature after the date of this statement are attached to said bonds.

That a full, true and correct list of the said bonds and interest coupons of petitioner, all of which are unpaid, and so owned and held by this claimant, West Coast Life Insurance Company, is attached hereto, marked Exhibit "A" and by reference thereto made a part of this statement; that column numbered "1" on said Exhibit "A" designates the respective numbers of the particular bonds so owned and held by this claimant, and that in each [95] instance where two numbers are set out in the same line in said column numbered "1" with a line or dash between said numbers, this claimant is the owner and holder of the bonds whose numbers are given, and the owner and holder of the bonds bearing each consecutive number between the numbers given; column numbered "2" designates the particular issue of the bonds of which the bonds referred to in column numbered "1" in the same line is a part; column numbered "3" designates and is the due date or the date of maturity of each of the bonds referred to in column numbered "1" in the same line; column number "4" indicates the particular series to which each of the bonds referred to in column numbered "1", in the same line, be-

longs; column numbered "5" indicates and is the principal amount or par value of each of the bonds referred to in column numbered "1" in the same line; column numbered "6" designates by the due dates thereof unpaid interest coupons so owned and held by this answering creditor, and attached or originally attached to the bonds referred to in column numbered "1" in the same line.

[Seal] WEST COAST LIFE INSUR-
ANCE COMPANY

By VICTOR ETIENNE, JR.

President.

CHAS. L. CHILDERS,

Attorney for West Coast Life

Insurance Company. [96]

State of California,

City and County of San Francisco—ss.

Victor Etienne, Jr., being first duly sworn, deposes and says:

That he is an officer of West Coast Life Insurance Company, a corporation, the claimant named in the foregoing statement of claim and interest, to-wit: the President thereof, and that he makes this verification for and on behalf of said corporation; that he has read the foregoing statement of claim and interest and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated upon information or belief, and that as to those matters he believes it to be true.

VICTOR ETIENNE, JR.

Subscribed and sworn to before me this 6 day of September, 1938.

[Seal] EDITH MORRISON,

Notary Public in and for the City and County of San Francisco, State of California. My Commission expires January 10, 1941.

[Endorsed]: Statement of Claim and Interest of West Coast Life Insurance Company. Filed Sep. 12, 1938.

(Exhibit "A" list of bonds omitted; see list of bonds attached to answer fld. Sep. 1, 1938). [97]

[Title of District Court and Cause.]

PROOF OF CLAIM OF R. D. CROWELL

At Los Angeles, California, in said District of California, on the 22nd day of August, 1938, came R. D. Crowell and made oath and says:

That Merced Irrigation District, the person by whom a Petition for Confirmation of a Plan of Composition of Bond Indebtedness has been filed, was at and before the filing of said Petition, and still is, justly and directly indebted to said Deponent in the sum of \$107,000.00 with interest thereon at the rates hereinafter specified from July 1, 1933, to the date of maturity of the bonds hereinafter referred to, said interest being evidenced by semi-annual coupons attached to said bonds and more particularly hereinafter described.

That the consideration for said debt consists of gold bonds of said Merced Irrigation District in the form set forth in the Petition on file herein,

said bonds all being of the first issue, all dated as of January 1, 1922, and being of a series, division and maturity and numbered as hereinafter set forth, each of which said bonds has attached thereto semi-annual interest coupons representing semiannual installments of interest at the rates specified in the following schedule, being the coupons due on July 1, 1933, and all semiannual coupons subsequently maturing. [98]

Bond Numbers	Series	Division	Interest Rate	Maturity	Principal Amount
3814 - 3815 and 3816	19	2	5½%	1/1/51	\$3,000.00
3918 to 3922 both inclusive	20	2	5½%	1/1/52	5,000.00
4715 to 4721 both inclusive					
4887 to 4890 both inclusive	21	2	5½%	1/1/53	11,000.00
5082 to 5086 both inclusive, 5120 - 5181 and 5321 to 5324 both inclusive	22	3	5½%	1/1/54	11,000.00
5706 to 5716 both inclusive, 5766, 5799 to 5806, both inclusive, 5923 to 5947 both inclusive, 5992 to 6011, both inclusive, and 6026 to 6031 both inclusive	23	3	5½%	1/1/55	71,000.00
9941 and 9967 to 9971 both inclusive	28	4	6%	1/1/60	6,000.00

That no part of said debt has been paid; that there are no set-offs or counter claims to the same.

R. D. CROWELL.

Subscribed and sworn to before me this 22nd day of August, 1938.

[Seal] ANNE SELBY,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Proof of Claim of R. D. Crowell
Filed Sep. 12, 1938. [99]

[Title of District Court and Cause.]

PROOF OF CLAIM OF BELLE CROWELL

At Los Angeles, California, in said District of California, on the 22nd day of August, 1938, came Belle Crowell and made oath and says:

That Merced Irrigation District, the person by whom a Petition for Confirmation of a Plan of Composition of Bond Indebtedness has been filed, was at and before the filing of said Petition, and still is, justly and directly indebted to said Deponent in the sum of \$22,000.00 with interest thereon at the rates hereinafter specified from July 1, 1933, to the date of maturity of the bonds hereinafter referred to, said interest being evidenced by semi-annual coupons attached to said bonds and more particularly hereinafter described.

That the consideration for said debt consists of gold bonds of said Merced Irrigation District in the

form set forth in the Petition on file herein, said bonds all being of the first issue, all dated as of January 1, 1922, and being of a series, division and maturity and numbered as hereinafter set forth, each of which said bonds has attached thereto semi-annual interest coupons representing semi-annual installments of interest at the rates specified in the following schedule, being the coupons due on July 1, 1933, and all semiannual coupons subsequently maturing.

Bond Numbers	Series	Division	Interest Rate	Maturity	Principal Amount
2323 to 2327 both inclusive—					
2714 - 2721	17	1	6%	7/1/49	\$7,000.00
3269 to 3273 both inclusive	18	1	6%	7/1/50	5,000.00
					[100]
5337 to 5343 both inclusive—					
5397 - 5398 - 5399	22	3	5½%	1/1/54	10,000.00

That no part of said debt has been paid; that there are no set-offs or counter claims to the same.

BELLE CROWELL.

Subscribed and sworn to before me this 22nd day of August, 1938.

[Notarial Seal] ANNE SELBY,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Proof of Claim of Belle Crowell
Filed Sep. 12, 1938. [101]

[Title of District Court and Cause.]

ANSWER AND OBJECTIONS TO PETITION
FOR CONFIRMATION OF A PLAN OF
COMPOSITION OF BOND INDEBTED-
NESS AND PROOF OF CLAIMS.

Come now respondents Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased, Reed J. Bekins, Cooley Butler, Chas. D. Bates, Lucretia B. Bates, Edna Bicknell Bagg, John D. Bicknell Bagg, Mary B. Cates, Nancy Bagg Eastman, Charles C. Bagg, Horace B. Cates, Barker T. Cates, Mary Edna Cates Rose, Mildred C. Stephens, N. O. Bowman, W. H. Heller, Fannie M. Dole, James Irvine, J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper and George B. Miller as Trustees of Cogswell Polytechnical College, Tulocay Cemetery Association, a corporation, Percy Griffin, Emogene Cowles Griffin, D. Lyle Ghirardelli, A. M. Kidd, Grayson Dutton, Frances E. Shanahan, Stephen H. Chapman, Edith O. Evans, J. Ofelth, Dante Muscio, I. M. Green, E. J. Greenhood, Otis M. Judson, Julia Sunderland, Lily Sunderland, Florence S. Ray, Joseph S. Ray, Amelia Kingsbaker, S. Lachman Company, a corporation, Sue Lachman, Sophia Mackenzie, Nettie Mackenzie, R. J. McMullen, J. R. Mason, Gilbert Moody, [102] William Payne, G. H. Pearsall, Alice B. Stein, Sherman Stevens, E. G. Soule, Margaret B.

Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased, Theo. F. Thieme, Fletcher G. Flaherty, Frances V. Wheeler, Miriam H. Parker, Nicholas H. Prusch, Apphia Vance Morgan, H. S. Dutton, First National Bank of Pomona, George F. Covell, Alma H. Woore, George Habenicht, Seth R. Talcott, Adolf Aspegren, J. H. Fine, and Mrs. J. H. Fine, creditors of petitioner, Merced Irrigation District, and answering and objecting to the petition for confirmation of a plan of composition of bonded indebtedness herein, admit, deny, and aver as follows; and hereby present their proof of claims:

I.

Said respondents allege and by way of proof of their several claims and in accordance with the stipulation of the petitioner permitting proof of claim to be made in this manner show that they are the owners of bonds of said district as described in its petition herein, in the several aggregate principal amounts set opposite their names hereafter in this paragraph, and which said bonds are unpaid, and each of which said bonds have attached thereto or originally had attached thereto interest-bearing coupons, as provided by said issues and which matured semi-annually, as aforesaid, commencing July 1, 1933, to the present time, and have been respectively presented for payment to the treasurer of said district and payment thereof refused, and that said respondents are respectively the owners

and holders of such attached or detached coupons appertaining to their said bonds, viz:

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Martin Bekins, deceased.....	\$188,000.00
Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased.....	28,000.00
Reed J. Bekins.....	4,000.00
Cooley Butler.....	17,000.00
[103]	
Chas. D. Bates.....	47,000.00
Lucretia B. Bates.....	47,000.00
Edna Bicknell Bagg.....	15,000.00
John D. Bicknell Bagg.....	1,000.00
Mary B. Cates.....	1,000.00
Nancy Bagg Eastman, Charles C. Bagg, Horace B. Cates, Barker T. Cates, Mary Edna Cates Rose, Mildred C. Stephens	27,000.00
N. O. Bowman.....	6,000.00
W. H. Heller.....	3,000.00
Fannie M. Dole.....	5,000.00
James Irvine.....	126,000.00
J. C. Titus.....	10,000.00
Cogswell Polytechnical College.....	50,000.00
Tulocay Cemetery Association.....	3,000.00
Percy Griffin.....	1,000.00
Emogene Cowles Griffin.....	4,000.00
D. Lyle Ghirardelli.....	5,000.00
A. M. Kidd.....	1,000.00

Grayson Dutton.....	3,000.00
Frances E. Shanahan.....	4,000.00
Stephen H. Chapman.....	1,000.00
Edith O. Evans.....	5,000.00
J. Ofelth.....	5,000.00
Dante Muscio.....	1,000.00
I. M. Green.....	2,000.00
E. J. Greenhood.....	10,000.00
Otis M. Judson.....	10,000.00
Julia Sunderland.....	5,000.00
Lily Sunderland.....	5,000.00
Florence S. Ray.....	9,000.00
Joseph S. Ray.....	2,000.00
Amelia Kingsbaker.....	3,000.00
S. Lachman Company.....	11,000.00
Sue Lachman.....	1,000.00
Sophia Mackenzie.....	10,000.00
Nettie Mackenzie.....	5,000.00
R. J. McMullen.....	5,000.00
J. R. Mason.....	18,000.00
Gilbert Moody.....	25,000.00
William Payne.....	6,000.00
G. H. Pearsall.....	12,000.00
Alice B. Stein.....	3,000.00
Sherman Stevens.....	10,000.00
E. G. Soule.....	20,000.00
Margaret B. Thomas.....	10,000.00
Isabella Gillett and Effie Gillett Newton as executrices of J. N. Gillett Estate	5,000.00
Theo. F. Thieme.....	3,000.00
Fletcher G. Flaherty.....	1,000.00

Frances V. Wheeler.....	6,000.00
Miriam H. Parker.....	8,000.00
Nicholas H. Prusch.....	5,000.00
Apphia Vance Morgan.....	15,000.00
H. S. Dutton.....	2,000.00
First National Bank of Pomona.....	20,000.00
George F. Covell.....	10,000.00
Alma H. Woore.....	3,000.00
George Habenicht.....	1,000.00
Seth R. Talcott.....	4,000.00
Adolf Aspegren.....	10,000.00
J. H. Fine & Mrs. J. H. Fine.....	1,000.00

That the aggregate principal amount of said bonds is \$884,000.00 of which but few have matured, and that of said bonds which have [104] not matured the maturities are over the ensuing years up to and including 1966, and all of which bonds bear interest at 5½% or 6% per annum, represented by interest-bearing coupons until they mature, and thereafter at the rate of 7% per annum until paid.

II.

Deny that petitioner is entitled to the relief offered by Chapter X of the bankruptcy act of the United States.

III.

Deny that petitioner is unable to meet its debts as they mature; deny that petitioner has not been able, or is now unable, or will not be able to collect revenue and assessments on the lands within its

boundaries or otherwise, sufficient to meet its obligations now due or as they mature.

IV.

As to paragraph III and IV of said petition, respondents have no knowledge or information sufficient to form a belief as to whether the allegations of said paragraph are true and on said ground deny that allegations of said paragraphs are true.

V.

Answering paragraph V of the petition, respondents deny that Reconstruction Finance Corporation is a creditor of petitioner as to the amount of the full face value of bonds therein mentioned or any other amount or a creditor at all affected by said plan of composition of readjustment; deny that holders of 90% or any other amount of the debts of petitioner affected by said plan of composition or readjustment or any other proportion thereof have consented to said plan of composition or readjustment.

VI.

Answering paragraph VI of the petition respondents deny that said plan of composition is fair and equitable or for the best interest of the creditors of said petitioner; and deny that [105] said plan does not discriminate in favor of any creditor or creditors, or class of creditors, and allege that said plan discriminates unfairly in favor of the Reconstruction Finance Corporation and against re-

spondents. Deny that said plan of composition or its acceptance by the Reconstruction Finance Corporation is in good faith or that petitioner is authorized to take any action necessary to carry out said plan.

VII.

Answering paragraph VII of said petition, respondents have no knowledge or information sufficient to form a belief as to the truth of the allegations thereof, and on that ground deny said allegations.

Separate Defenses

VIII.

As a first and separate defense to said petition these answering respondents allege:

That heretofore and prior to the commencement of this proceeding, the petitioner filed a petition in bankruptcy in this court under the provisions of Chapter IX of the Bankruptcy Act of the United States and set up in said petition identically the same plan of composition proposed in this proceeding and alleged therein that the bond issues of petitioner, as described in these proceedings, were proposed to be adjusted by the payment of 51.501 cents on each dollar of principal with nothing for interest exactly as set forth in the plan herein, and in said former proceedings set forth the names and lists

of bondholders being creditors of said district with the sole difference that at the time of the commencement of said proceeding the said bonds were in the hands of the former individual and corporate bondholders other than the Reconstruction Finance Corporation, and said petitioner set forth therein that a large proportion of such [106] bondholders had accepted the said plan being approximately 87 per cent of the bonds just as is claimed in these proceedings and had deposited their bonds in escrow subject to said plan; that said approximate 87 per cent had so accepted said plan and during the course of said proceeding the holdings of said 87 per cent were paid off and discharged by a loan received from the Reconstruction Finance Corporation and the respondents herein were respondents in said cause and defended said action which said action went to trial and a judgment was rendered in favor of the district confirming said plan.

That on or about the 4th day of March, 1936, the District Court of the United States for the Southern District of California rendered its decree and judgment confirming the said plan after a full trial and hearing upon the merits of said plan, whereupon the respondents in said cause, being the respondents in this cause appealed therefrom to the Circuit Court of Appeals for the Ninth Circuit, wherein said cause was reversed April 12, 1937, as reported in 89 Fed. (2d) 1002, from which said petitioner applied to the United States Supreme

Court for a writ of certiorari and the same was denied (58 Sup. Ct. 30) on October 11, 1937.

IX.

As a second and separate defense to said petition, these answering respondents allege:

That on or about July 20, 1937, the petitioner filed a petition in the Superior Court of the State of California, in and for the County of Merced, under the provisions of California Statutes of 1937, Chapter 4, for the purpose of enforcing and consummating, in proceedings in the nature of bankruptcy proceedings, identically the same plan of composition alleged and set forth in the present proceeding. That said Superior Court, after submission of the cause, ordered that an interlocutory judgment be [107] entered in favor of said petitioner or Merced Irrigation District, confirming said plan of composition. That said cause and proceeding is pending in said Superior Court and involves identically the same matters and facts alleged in the petition in this proceeding. That under the provisions of said California Statutes of 1937, Chapter 4, and of Section 19 of said chapter, the plan of composition sought to be enforced in that proceeding and in the present proceeding became binding upon and as to the petitioner, Merced Irrigation District, and the Reconstruction Finance Corporation, and became binding upon said parties prior to the commencement of this proceeding, and said Reconstruction Finance Corporation is not a creditor affected by

this proceeding nor by the alleged plan of composition herein.

That said Reconstruction Finance Corporation accepted the plan of composition therein referred to several years ago, and that under the terms of California Statutes of 1937, Chapter 4, Section 19, said Reconstruction Finance Corporation and petitioner were bound by said plan of composition prior to the commencement of this proceeding and thereby said corporation is not affected by the plan referred to in this proceeding.

X.

As a third and separate defense to said petition, these answering respondents allege:

That said proposed plan of composition or readjustment discriminates unfairly against respondents, is inequitable and unjust, and does not comply with the terms of Chapter 10 of the Bankruptcy Act for the reason that Reconstruction Finance Corporation is not a bona fide creditor of petitioner and is not a creditor affected by the plan of readjustment at all, in that it has simply loaned to petitioner sufficient moneys to pay petitioner's bond obligations at 51.525 cents on the dollar, and the bond [108] obligations which it now purports to hold, and which petitioner alleges that it holds, are bond obligations deposited, received, and held pursuant to the same plan of composition, and therefore, to the extent of the said bond obligations which said Reconstruction Finance Corporation purportedly holds, said plan of composition and readjustment has been fully and

completely executed and effected and said bond obligations are no longer affected by said plan. That any holding of said bond obligations and allegations as to their being affected by said plan is a fiction and only for the purpose of forcing said plan upon respondents. That any purported consent of the Reconstruction Finance Corporation to said plan of composition and readjustment is void and not within the terms or purview of Chapter X of the Bankruptcy Act.

XI.

As a fourth and separate defense to said petition, these answering respondents allege:

That the said plan of composition proposed in said petition is inequitable, unjust, and unfair to these respondents in that it proposes to force respondents to surrender and deliver up their bonds and interest coupons for a small fraction of the face value thereof, and without any other consideration therefor, while at the same time the petitioner, by the exercise of reasonable diligence, is and will be financially able to pay the obligations so owned by respondents in full and according to their terms. That petitioner has a full and complete remedy under terms and provisions of California Irrigation District Act, whereby petitioner is not required to make annual assessments beyond and above ability of landowners to pay.

XII.

As a fifth and separate defense to said petition, these answering respondents allege: [109]

That the debts of petitioner sought to be readjusted in this proceeding are not the only debts or obligations which are, in effect, liens upon the lands within the boundaries of petitioner, but these answering creditors are informed and believe, and upon such information and belief allege, that there are within the boundaries of petitioner three or more incorporated cities, three or more drainage districts, and numerous school districts, each owing bonded indebtedness, and that in addition thereto, there are certain road districts owing bonded indebtedness, each an obligation of the owners of the lands, or of the land, within the respective cities and districts, and each similar to the obligations of the same lands or the owners thereof to the bonded debt of petitioner involved in these proceedings, and that in addition to said public debts these answering creditors are further informed and believe, and upon such information and belief allege that more than half of the lands within the petitioner are mortgaged or held under deeds of trust as security for private debts of the respective owners thereof, and that these other and additional debts and obligations, public and private, aggregate large sums of money, in excess of \$5,000,000.00; that at least a portion of said other and additional debts and obligations are, as a matter of law, junior to the bonds of petitioner sought to be readjusted in these proceedings; that the bonds of Merced Irrigation District, therefore, constitute only one of the obligations against said lands and the owners thereof; that said

plan of readjustment set out in said petition does not contemplate any readjustment of any such other and additional debts and obligations; and that these answering creditors are informed and believe, and upon such information and belief allege, that no other proceeding has been commenced or is contemplated to readjust such other and additional debts or obligations, or any of them; that said plan [110] of readjustment set out in the petition filed herein is unfair, inequitable, and not for the best interests of the creditors of petitioner, and that said plan discriminates unfairly in favor of the owners of bonds of said cities, drainage, school and road districts within the boundaries of Merced Irrigation District, and discriminates unfairly in favor of the holders of mortgages and the beneficiaries under deeds of trust securing private debts upon lands within the boundaries of petitioner.

XIII.

As a sixth and separate defense to said petition, these answering respondents allege:

That the proposed plan of readjustment is unfair, inequitable and unjust for the further reason that it purports to provide that the Reconstruction Finance Corporation shall receive bonds payable over a period of years at a rate of interest in exchange for the obligation owed by said Reconstruction Finance Corporation, and that such bonds shall be issued in the full amount of the outstanding indebtedness of the said Reconstruction Finance Corporation, whereas as to respondents it provides that

they shall receive not bonds but cash, and that such cash shall be at the rate of approximately 51¢ of the principal of the indebtedness due respondents, with nothing on account of accrued interest thereon, which at this time amounts to from \$250.00 to \$300.00 per \$1000.00 bond, in addition to the principal amount due.

XIV.

As a seventh and separate defense to said petition, these answering respondents allege:

Hundreds of thousands of dollars, the exact amount of which is unknown to these respondents, but which is not less than \$1,000,000.00, has been wrongfully and unlawfully diverted by the petitioner and its officers to the prejudice of the property [111] rights and interests of these respondents in that said funds were trust funds belonging to these respondents and other bondholders of said district, and which said trust funds have been unlawfully applied to objects and purposes other than the said trust purposes, and in particular that said trust funds have been paid to and applied upon obligations other than obligations due the beneficiaries and trustees of said trusts, to-wit; respondents and other bondholders of the same class, and that said plan is unjust, unfair and inequitable in that it prevents respondents from pursuing said funds and deprives them of the benefit thereof and will deprive these respondents of further trust funds and properties belonging to these respondents as beneficiaries, contrary to the law and equity, and

consisting of moneys in the hands of the petitioner, tax certificates, real and personal property, and the right to compel the governing bodies of said petitioner, to-wit: its Board of Directors and the Board of Supervisors of Merced County, California, to levy assessments for the payment of the obligations due respondents.

XV.

As an eighth and separate defense to said petition, these answering respondents allege:

That the payment of assessments or other charges by the land owners to Merced Irrigation District, and particularly that portion of the assessments or other charges of said district required for the retirement of said bonds as they mature, constitutes but a small fraction of the annual costs of the land owners in the production and marketing of farm commodities upon and from said lands; that the total annual cost for the payment of interest on the bonded debt of said district at the present time, without considering defaulted obligations, does not exceed an average of [112] \$2.00 per acre, whereas these respondents are informed and believe, and upon such information and belief allege, that the total average farming and marketing cost per acre per annum for all purposes is in excess of \$40.00.

That with a portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings and described in the petition herein, the petitioner installed large hydro-electric power works and owns and operates said works and sells, under

long term contract, electric energy generated at said works; that respondents are informed and believe, and upon such information and belief allege, that petitioner will receive from the sale of said electric energy over and above the cost of operating said hydro-electric power works a net average annual income in excess of \$450,000; that upon the same ground respondents allege that the average cost of operation and maintenance of all works of petitioner, other than hydro-electric power works, will not exceed \$350,000 per year, and that the surplus of power revenue over and above the said cost of operation and maintenance will apply in reduction of the amounts necessary to be raised for the purpose of paying interest upon and retirement of the said bonds of petitioner, and that the remaining portion of interest upon and retirement of the said bonds of petitioner, after said application of power revenue, will constitute the only sums for which the petitioner will be required to raise funds by assessment or otherwise; that if the total annual bonded debt requirement after the application of power revenue as aforesaid were as of the present date waived or eliminated, the actual saving to the individual land owner in his annual costs would be comparatively small. The proposed plan of readjustment set out in said petition provides for both reduction in principal and interest on said [113] bonded debt, and reduces the total obligation to the land owners by approximately 40% with a correspondingly small saving to the individual land owner in his total

annual costs. Notwithstanding the fact that the contemplated plan of readjustment set out in the petition will, if made effective, effect an actual annual saving to the individual land owners within the said district which would be comparatively negligible, it requires these answering creditors to immediately cancel and write off approximately 50% of its capital investment in the bonds of said district.

XVI.

As a ninth and separate defense, these answering respondents allege: _

That if the plan of readjustment proposed in the petition herein is made effective, then these answering creditors are informed and believe, and upon such information and belief allege, that the revenue which petitioner will receive from the sale of hydro-electric energy, as aforesaid, will more than pay the entire bonded debt of petitioner, both principal and interest, leaving the annual cost of operation and maintenance of the irrigation and drainage works of petitioner only to be raised by petitioner by assessment or otherwise, which costs will constitute, as aforesaid, only a comparatively nominal charge upon the lands, and this, notwithstanding the fact that the major portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings was used in the construction of storage and other irrigation works, without which irrigation on a large scale as now practiced in peti-

tioner, or dependable irrigation at all, would not be possible.

XVII.

As a tenth and separate defense, these answering respondents allege: [114]

That these respondents are informed and believe, and upon such information and belief allege, that farming conditions as to cost of production and marketing and prices of farm commodities have materially stabilized themselves since said plan was adopted and that petitioner is now and was when the petition was filed herein enabled, without undue burden upon the land owners therein, to meet the obligations represented by the bonds of said district, including those owned by these respondents as aforesaid; that it is unfair, inequitable and unjust to cancel and annul 50%, or thereabouts, of the capital investment of respondents in the bonds of said district, with no provision for reinstating said capital investment or recouping the loss thus sustained by respondents, when the said district and the land owners therein, through such improved economic conditions are enabled, without undue burden, to meet such obligations and pay said debt.

XVIII.

As an eleventh and separate defense, these answering respondents allege:

That on or about December 1, 1933, a committee of bondholders of said petitioner district agreed with the Board of Directors of said district upon a

plan of readjustment for all of the bonds of said petitioner district referred to in said petition; that thereafter said plan was submitted to the qualified electors of said petitioner district at an election duly called for that purpose, and was at said election approved by a very large majority, and the said petitioner district was by said electors at said election authorized to issue its refunding bonds for the purpose of carrying out said plan after the said plan had been submitted to and approved by the California District Securities Commission as required by law. Said plan provided for a substantial reduction in the total obligation of the said district; that respondents have approved and do now approve said plan of [115] December 1, 1933, are informed and believe, and upon such information and belief allege, that said plan is feasible and practicable, and is as fair, equitable and just to both the owners of bonds of petitioner and to said petitioner as any plan that can be devised, and will afford said petitioner sufficient relief to enable it to meet its obligations thereunder, without undue burden.

XIX.

As a twelfth and separate defense, these answering respondents allege:

That of the debts alleged in paragraph III of said petition, to aggregate in principal amount \$16,190,000.00, approximately \$14,640,000 in principal amount thereof, together with a substantial sum of interest accrued thereon, has been paid on the basis

of approximately 51.50 cents on the dollar, with funds derived from a loan to said district from Reconstruction Finance Corporation, and that said district is not indebted upon the bonds so paid in any amount, but that said district is indebted to Reconstruction Finance Corporation for the amount of said loan aggregating approximately \$8,000,000, which obligation is evidenced by contract or contracts between said district and said Reconstruction Finance Corporation, and payable over a period of years with interest at 4% per annum, payable semi-annually, and will eventually be evidenced by refunding bonds of said district in the amount of said loan; that respondents are further informed and believe, and upon such information and belief allege that Reconstruction Finance Corporation is not the owner of the bonds so paid, or retired, or alleged to have been purchased with funds derived from said loan, but that said bonds so paid, retired or alleged to have been purchased are in legal effect paid and cancelled, and that if it should be found as a matter of law that said bonds so paid, retired or purchased with funds derived from [116] said loan are in legal effect still in existence as obligations of said district and held by Reconstruction Finance Corporation, then respondents are informed and believe, and upon such information and belief allege that said bonds are so held by Reconstruction Finance Corporation as collateral only, and that said district is not obligated thereon in excess of its loan

from Reconstruction Finance Corporation and the interest thereon.

XX.

As a thirteenth and separate defense to said petition, respondents are informed and believe, and upon such information and belief allege:

That Reconstruction Finance Corporation is not the holder or owner of bonds of Merced Irrigation District at all, but that Merced Irrigation District is indebted to Reconstruction Finance Corporation upon contract, or contracts, representing a loan from Reconstruction Finance Corporation, and refunding bonds of petitioner have already been authorized by the petitioner for delivery to Reconstruction Finance Corporation, to represent said loan in the principal amount of approximately \$8,338,000 and that it is not proposed by said plan of readjustment of debts that the debt to Reconstruction Finance Corporation will be in any manner changed or readjusted; and that upon the same grounds respondents allege that the only outstanding bonds of the petitioner aggregate the principal amount of approximately \$1,550,000, and that these are the only bonds affected or proposed to be changed by said proposed plan of debt readjustment; that the bonds owned and held by respondents hereinabove alleged are a part of said aggregate of \$1,550,000 in principal amount of bonds sought to be affected or readjusted by said plan, and that none of the holders or owners of said bonds so sought to be adjusted or affected by said plan have consented

in writing or otherwise thereto; that respondents [117] are informed and believe, and upon such information and belief allege that the debt to respondents and others standing in a similar position represents an entirely different class of debt from that owing to Reconstruction Finance Corporation and that two-thirds of the principal amount of each class of indebtedness affected by this plan have not accepted said plan in writing or by contract or otherwise, and that if said plan of debt readjustment is approved and made effective, the debt to Reconstruction Finance Corporation will not be affected thereby, but that Reconstruction Finance Corporation will actually benefit thereby.

XXI.

As a fourteenth and separate defense to said petition, these answering respondents allege:

That Merced Irrigation District is a subdivision and governmental agency of the State of California and neither it nor its obligations are subject or amenable to the bankruptcy power of the Congress of the United States. That the State of California has not consented, nor can it consent, to this proceeding by petitioner in bankruptcy or for composition of debts. That any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Ex. Sess.), Chapter 4, is unconstitutional and void in that said chapter violates the provisions of Article I, Section 16; Article IV, Section 1; Article X,

Section 5, Article XIII, Section 6, and Article I, Section 21 of the Constitution of the State of California, and Article I, Section 10 of the Constitution of the United States, and is otherwise unconstitutional and void.

XXII.

As a fifteenth and separate defense to said petition, these answering respondents allege:

That Chapter X of the Bankruptcy Act of the United [118] States is unconstitutional and void in that it violates Article I, Section 10, Clause 1, and the Fifth and Tenth Amendments, of the Constitution of the United States.

Wherefore, respondents pray that petitioner take nothing by its alleged petition; that said petition and these proceedings be dismissed, and that respondents recover their costs.

W. COBURN COOK,

Attorney for the respondents
Milo W. Bekins and Reed J.
Bekins as trustees appointed
by the Will of Martin Bekins,
deceased, et al.

State of California,
County of Stanislaus—ss.

Gilbert Moody, being duly sworn, deposes and says:

That he is one of the respondents named in the foregoing answer and is one of the answering respondents therein; that he has read said answer and knows the contents thereof, and that the same is

true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

GILBERT MOODY.

Subscribed and sworn to before me this 22nd day of September, 1938.

[Seal] S. H. HACKETT,

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Answer and Objections of Milo W. Bekins, et al. Filed Sep. 23, 1938. [119]

At a stated term, to-wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday, the 10th day of October, in the year of our Lord one thousand nine hundred and thirty-eight.
Present:

The Honorable: Geo. Cosgrave, District Judge.

[Title of Cause.]

This matter coming on for hearing on proceedings for confirmation of a Plan of Composition of Bond indebtedness, filed September 1, 1938; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; and Geo. Clark, Esq., appearing for Mary E. Morris:

It is ordered that the cause be, and it hereby is, continued to November 14, 1938, for the said hearing. [120]

At a stated term, to-wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Thursday, the 13th day of October, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Geo. Cosgrave, District Judge.

[Title of Cause.]

(The Following Order Is Made Nunc Pro Tunc,
October 10th, 1938)

Upon motion of counsel for respondents, W. Curn Cook, Esq., there being present in court and consenting to the making of the motion, counsel for the petitioner, it is ordered that a hearing be had upon the question of whether the Reconstruction Finance Corporation is a creditor affected materially by the plan of composition in this cause on November 14th, 1938, and that notice be given by the clerk by mail, to the Reconstruction Finance Corporation and that they appear at said hearing when the issue will be determined by the Judge.

[121]

[Title of District Court and Cause.]

To the Reconstruction Finance Corporation, Washington, D. C.:

You will please take notice that a controversy having arisen as to whether you are a creditor of the above entitled petitioner whose claim is or shall be affected by the proposed plan of composition.

You are hereby notified and directed to appear at a hearing to be held on November 14, 1938, at 10 o'clock A. M., of that day before the above entitled Court at the Courtroom thereof in the Post Office Building, City of Fresno, County of Fresno, State of California at which time and place the said issue will be determined by the Judge of the above entitled Court.

Witness the Honorable George Cosgrave, United States District Judge with the seal of the Court annexed this 15th day of October, A. D. 1938.

[Seal]

R. S. ZIMMERMAN,

Clerk.

Attest:

FRANCIS E. CROSS,

Deputy Clerk.

Mailed to Reconstruction Finance Corporation, Washington, D. C. 10/15/38.

FRANCIS E. CROSS,

Deputy Clerk. [122]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday the 31st day of October, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Geo. Cosgrave, District Judge.

[Title of Cause.]

This matter being on the calendar for hearing at Fresno for Monday, November 14th, 1938, on proceedings for confirmation of a Plan of Composition of Bond Indebtedness, filed September 1st, 1938, it is by the court ordered that said matter be, and it is hereby, postponed to November 21st, 1938, for hearing; and this matter being also on the calendar for November 14th, 1938, for hearing upon the question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition, pursuant to minute order of October 13th, 1938, nunc pro tunc, October 10th, 1938, it is by the Court ordered that when said question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition is called on November 14th, 1938, at Fresno, that it be also continued to November 21st, 1938, for hearing at Fresno; and that all witnesses present on Nov. 14, 1938, be notified in open court to appear on November 21st, 1938, without the necessity of counsel being present. [123]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday, the 14th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

This matter coming on for hearing upon the question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition, pursuant to minute order of October 13th, 1938, nunc pro tunc October 10, 1938; and the parties having so stipulated, it is ordered that the said hearing be continued to Nov. 21st, 1938, and that any witnesses who may be present appear in court at that time. [124]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the 15th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on motion of Frank J. Keenan, chief of the Division of Drainage, Levees, and Irrigation Districts of the Reconstruction Finance Corporation, to quash subpoena duces tecum, etc., pursuant to stipulation now presented and ordered filed: Stephen W. Downey, Esq., appearing for the Debtor; Lucius F. Chase, Esq., appearing for R. D. Crowell and Belle Crowell; Irl D. Brett and Leo V. Silverstein, Assistant U. S. Attorneys, appearing for Frank J. Keenan, Chief of Drainage, Levees, and Irrigation Division of the Reconstruction Finance Corporation; and H. A. Dewing being present as court reporter and reporting the proceedings; at 10:30 o'clock A. M. both sides answering ready.

Attorney Silverstein makes a statement in support of the said motion and Attorney Downey makes a statement in support of the said motion. At 10:55 o'clock A. M. Attorney Chase argues in opposition to the said motion. And, at 11:44 o'clock A. M. Attorney Downey makes closing statement. Whereupon,

It is ordered that motion to quash subpoena duces tecum be granted on the grounds of not being specific and being oppressive and on the further understanding and stipulation of counsel that Attorney

Chase may be permitted to inspect files and documents and make copies thereof at the office of the District at Merced, California, on November 19, 1938, at 9 o'clock A. M. [125]

[Title of District Court and Cause.]

STIPULATION

It is stipulated between the petitioner and counsel for James Irvine and other respondents who may appear in this cause, that respondent creditors appearing in this cause may comply with the provisions for filing claims by attaching to verified answer that may be filed in this cause, statements of the claims of such respondent creditors, and that it will be sufficient if such answers are verified by one of the respondent creditors.

Dated this 27th day of July, 1938.

W. COBURN COOK,

Attorney for Certain
Respondents.

HUGH K. LANDRAM,

C. RAY ROBINSON,

STEPHENS W. DOWNEY,

Attorneys for Petitioner.

[Endorsed]: Stipulation Filed Nov. 21, 1938.

[126]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday, the 21st day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on (1) question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) Confirmation of Plan of Composition of bond indebtedness, etc., filed September 1, 1938; Stephen W. Downey, C. Ray Robinson, and Hugh K. Landram, Esqs., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al; L. F. Chase, Esq., appearing for R. D. & Belle Crowell; George Clark, Esq., appearing for Mary E. Morris; Chas. L. Childers, Esq., appearing for the West Coast Life Insurance Company; Peter tum Suden, Esq., appearing for Minnie E. Rigby, et al.; Newell J. Hooey, Esq., appearing for the Pacific National Bank of San Francisco; David Friedenrich, Esq., appearing for Claire S. Strauss; Robert H. Walker, Esq., appearing for Florence Moore, et al.; and Ross Reynolds and A. H. Bargion being present as court reporters and reporting the proceedings:

On motion of Attorney Chas. L. Childers it is ordered that Robert H. Walker and David Friedrich, Esqs., be, and they are, admitted to practice in this Court for the purpose of this proceeding.

At 10:05 o'clock a. m. Attorney Downey makes opening statement of the case.

At 11 o'clock a. m. Court recesses. At 11:10 o'clock a. m. Court reconvenes, all being present as before.

Attorney Cook makes a statement in behalf of respondents, [127] and certain stipulation is entered into between counsel re status of claims filed by respondents, as reflected by the reporters' notes, and it is so ordered.

Attorney Cook now makes opening statement in behalf of the respondents of the issues herein.

At 11:45 o'clock a. m. Attorney Chase makes a statement re proof to be adduced as to the issues on (1).

At 12:20 o'clock p. m. Attorney Clark makes a statement; at 12:25 o'clock p. m. Attorney Childers makes a statement; at 12:28 o'clock p. m. Attorney Hooey makes a statement; and at 12:35 o'clock p. m. it is ordered that the matter be hereby continued until 2 o'clock p. m.

At 2:03 o'clock p. m. Court reconvenes, and all being present as before it is ordered that the hearing proceed.

Attorney Clark makes a statement and Attorney Downey makes a statement. The following exhibits are offered and admitted in evidence:

Petitioner's Ex. 1—Copy of Resolution of R. F. C. dated 11/14/34, and certain portions therefrom are read.

Petitioner's Ex. 2—Copy of Resolution of Merced Irrigation District dated 12/11/.....

Petitioner's Ex. 3—Copy of Resolution of Merced Irrigation District, adopting refunding Plan.

Petitioner's Ex. 4—Amendatory Resolution, dated 7/6/35.

Petitioner's Ex. 5—Amendatory Resolution, dated 9/18/35.

Petitioner's Ex. 6—Copy of Resolution of Merced Irrigation District, dated 7/23/35.

Petitioner's Ex. 7—Copy of Resolution of Merced Irrigation District, dated 9/18/35.

Petitioner's Ex. 8—Copy of Bond purchase contract dated 9/16/35.

Petitioner's Ex. 9—Copy of Agreement, dated 8/14/35.

At 3:15 o'clock P. M. Court recesses. At 3:25 o'clock P. M. Court reconvenes with all present as before.

D. B. Atkins is called, sworn, and testifies on direct examination by Attorney Downey, and the following exhibits are offered and admitted in evidence: [128]

Petitioner's Ex. 10—Copy of letter, dated 9/19/35 R. F. C. to Federal Reserve Bank.

Petitioner's Ex. 11—Twenty-two (22) photostatic copies of "Memo of Sale and Receipt".

It is stipulated and ordered that Attorney Peter tum Suden may be excused from further attendance.

At 4:45 o'clock P. M. Court adjourns until 10 o'clock A. M., November 22, 1938, for further hearing. [129]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Tuesday, the 22nd day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for (1) Further hearing on question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) Further hearing on Confirmation of Plan of Composition of bond indebtedness, etc., filed Sept. 1, 1938; Stephen W. Downey, C. Ray Robinson and Hugh K. Landram, Esqs., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; L. F. Chase, Esq., appearing for R. D. and Belle Crowell; George Clark, Esq., appearing for Mary D. Morris; Chas. L. Childers, Esq., appearing for West Coast

Life Insurance Company; Newell J. Hooey, Esq., appearing for Pacific National Bank of San Francisco; David Freidenrich, Esq., appearing for Claire S. Strauss; Robert K. Walker, Esq., appearing for Florence Moore, et al; Ross Reynolds and A. H. Bargion being present as official court reporters; it is ordered that the hearing proceed, whereupon,

D. B. Atkins resumes the stand and testifies further on direct examination by Attorney Downey, the following exhibit being admitted in evidence:

Resp. Ex. A: 3-page document (draft-memo and statement); and the witness being cross-examined by Attorney Clark, the following exhibits are admitted in evidence:

Petr's Ex. 12: Form letter of transmittal;

“ Ex. 13: Form letter (2/15/35)

Resp Ex. B: Form letter dated 1/7/35 with questionnaire attached;

Resp “ C: “ “ “ 1/10/35; [130]

Petr's Ex. 14: Certified copy of Judgment Roll, Case No. 10841, Sup. Ct., County of Merced;

“ “ 15: Copy of Resolution, dated 5/31/38;

“ “ 16: Copy of Acceptance of Plan, 6/9/38.

E. E. Neel is sworn and testifies on direct examination by Attorney Downey, is cross-examined by Attorney Childers, is examined by Attorney Clark, and the following exhibit is admitted in evidence:

Resp. Ex. D: List of Interest payments.

At 12:10 P. M. a recess is declared at 2 o'clock P. M. at which time court reconvenes, and all being present as before,

E. E. Neel resumes the stand and testifies further on examination by Attorney Clark, the following exhibit being admitted in evidence:

Resp. Ex. E: List of Interest payments to 6/21/38; and the witness being examined by Attorneys Friedenrich and Chase, the following exhibits are offered and admitted in evidence:

Resp. Ex. F: Letter, dated 10/21/38;

“ “ G: Copy of letter dated 11/3/38;

“ “ H: Letter dated 11/10/38;

“ “ I: Balance Sheet “Exh. A” ending 6/30/35;

“ “ J: Statement, ending 12/31/37;

“ “ K: “ “ 6/30/38;

“ “ L: 3 letters, dated 3/8/38, 3/22/38 and 4/7/38;

“ “ M: Copy of letter, 6/24/38, with “Exh. A” attached;

“ “ N: “ “ “ 7/3/37 (confirmation); and Attorney Cook now reads certain minutes into the record; whereupon, the following exhibit is marked for identification:

Resp. Ex. O for Idtf: Copy of printed record on appeal #8165 (No. 3907-Bkey); and the following exhibits are admitted in evidence:

Resp. Ex. P: Page 10—Petition (3907);

“ “ Q: “ 228—Findings of Fact, etc. (3907);

Resp. Ex. R: Page 275—Final Decree (3907);

“ “ S: Copy of Resolutions Adopting Cash Offer Plan;

“ “ T: Copy of Petition, case No. 11675;

“ “ U: Copy of Resolution accepting Plan;

“ “ V: Copy of Acceptance of Plan #11675 (7/13/37); [131]

Resp. Ex. W: Printed copy of notice to creditors #11675.

At 3:30 P. M. court recesses, reconvening at 3:40 P. M., and all being present as before, Attorney Cook reads certain testimony into the record; Attorney Downey makes a statement, and the following exhibit is admitted in evidence:

Petr's Ex. 17: Certified copy of Complaint #11604, Sup. Ct. of Merced County.

Attorney Downey reads certain documents from case No. 3907 Bkey. into the record herein, and the following exhibits are admitted in evidence:

Petr's Ex. 18: Copy of Resolution dated 6/15/37;

“ “ 19: Letters, dated 8/24/38.

At five o'clock P. M. the Court orders a recess herein to Nov. 23, 1938, at 9:30 A. M. for further hearing. [132]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Wednesday the 23rd day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for further hearing on (1) question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) on Confirmation of the Plan of Composition of bond indebtedness, etc., filed September 1, 1938; Messrs. Downey, Brand, and Seymour by Attorney Downey, C. Ray Robinson, and Hugh K. Landram, Esq., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; L. F. Chase, Esq., appearing for R. D. and Belle Crowell; George Clark, Esq., appearing for Mary E. Morris; Chas. L. Childers, Esq., appearing for the West Coast Life Insurance Co.; Newell J. Hooey, Esq., appearing for the Pacific National Bank of San Francisco; David Friedrich, Esq., appearing for Claire S. Strauss; Robert H. Walker, Esq., attorney for Florence Moore, et al. being excused for this day; Ross Reynolds and A. H. Bargion being present as court

reporters and reporting the proceedings; at 9:30 o'clock A. M. Court reconvenes in this matter, and all being present as before it is ordered that the hearing proceed:

The following exhibits are offered and admitted in evidence:

Petitioner's Ex. 20—Letter, dated 7/1/38,

Petitioner's Ex. 21—Copies of twenty letters and telegrams.

Attorney Cook now moves to dismiss the said petition, whereupon, it is ordered that the petition be, and it is, denied without prejudice at this time.

[133]

E. E. Neel resumes the stand and testifies further on direct examination by Attorney Downey, and the following exhibits are offered and admitted in evidence:

Petitioner's Ex. 22—Statement of tax rate under Sec. 39, Irrig. Dist. Act,

Petitioner's Ex. 23—Graphic Chart showing tax rates,

Petitioner's Ex. 24—Graphic Chart showing bond issue,

Petitioner's Ex. 25—Statement of Delinquent tax rolls,

Petitioner's Ex. 26—Balance Sheet, period ending 11/1/38,

Petitioner's Ex. 27—Statement of Power for years 1926 to 1938,

Petitioner's Ex. 28—List of properties deeded to District.

At 10:50 o'clock A. M. Court recesses. At 11:04 o'clock A. M. Court reconvenes with all present as before.

E. E. Neel resumes the stand and testifies further on cross examination by Attorney Clark, and the following exhibits are offered and admitted in evidence:

Petitioner's Ex. 29—Report year 1933 (District Sec. Comm'r's Act,

Petitioner's Ex. 30—Report year 1934 (District Sec. Comm'r's Act,

Petitioner's Ex. 31—Report year 1935 (District Sec. Comm'r's Act,

Petitioner's Ex. 32—Report year 1936 (District Sec. Comm'r's Act,

Petitioner's Ex. 33—Report year 1937 (District Sec. Comm'r's Act,

Petitioner's Ex. 29a—Approval by Dist. Sec. Comm'r's for year 1933,

Petitioner's Ex. 30a—Approval by Dist. Sec. Comm'r's for year 1934,

Petitioner's Ex. 31a—Approval by Dist. Sec. Comm'r's for year 1935,

Petitioner's Ex. 32a—Approval by Dist. Sec. Comm'r's for year 1936,

Petitioner's Ex. 33a—Approval by Dist. Sec. Comm'r's for year 1937.

Respondent's Ex. X—Annual statements of Financial Condition for years 1931-1937 (seven in all).

At 12:20 o'clock P. M. Court recesses until 2 o'clock P. M.

At 2:05 o'clock P. M. Court reconvenes, and all being present as before, it is ordered that the hearing proceed.

E. E. Neel resumes the stand and testifies further on cross examination by Attorney Clark and on cross examination by Attorneys Cook, Chase, Friedrich, and Childers, respectively.

At 3:30 o'clock P. M. Court recesses. At 3:40 o'clock P. M. Court reconvenes with all present as before. [134]

Attorney Downey makes a statement and reads certain portion of a preamble of a certain State Act known as "Downey Act" into the record. The following exhibit is offered and admitted in evidence:

Petitioner's Ex. 34—Page 24 of Booklet "The Agricultural Situation Oct. 1938".

Attorney Robinson reads certain testimony of Murray R. Benedict to the Court, and the following exhibit is offered and admitted in evidence:

Petitioner's Ex. 35—Preliminary Report by M. R. Benedict.

At 4:35 o'clock P. M. Court recesses. At 4:45 o'clock P. M. Court reconvenes with all present as before, whereupon the following exhibit is offered and admitted in evidence:

Petitioner's Ex. 36—Transcript of testimony of M. R. Benedict.

G. A. Momberg is called, sworn, and testifies on direct examination by Attorney Robinson and on cross examination by Attorneys Chase and Cook.

At 5:45 o'clock P. M. Court recesses in this matter until November 25, 1938, at 9 o'clock A. M. for further hearing. [135]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Friday, the 25th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for further hearing on (1) question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) Confirmation of Plan of Composition of bond indebtedness, etc., filed September 1, 1938; Stephen W. Downey, C. Ray Robinson, and Hugh K. Landram, Esqs., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; L. F. Chase, Esq., appearing for R. D. and Belle Crowell; George Clark, Esq., appearing for Mary E. Morris; Chas. L. Childers, Esq., appearing for the West Coast Life Insurance Co.; Newell J. Hooey, Esq., appearing for the Pacific National Bank of San Francisco; David

Freidenrich, Esq., attorney for Claire S. Strauss, being excused for this day; and Robert H. Walker, Esq., attorney for Florence Moore, et al., being excused for this day; and Ross Reynolds and A. H. Bargion being present as court reporters and reporting the proceedings; at 9 o'clock A. M. Court reconvenes herein, and all being present as before, it is ordered that the hearing proceed.

G. A. Momberg resumes the stand and testifies further on direct examination by Attorney Robinson and on cross examination by Attorneys Chase, Childers, and Clark:

At 10:30 o'clock A. M. Attorney Landram reads the testimony of B. P. Lester to the Court and the same is marked Petitioner's Ex. 36-A. The following exhibit is offered and admitted in evidence:

[136]

Petitioner's Ex. 37—Letter, dated 12/15/33 (Bondholders Protective Committee).

Attorney Cook reads certain portion of testimony of B. P. Lester to the Court, and the following exhibit is offered and admitted in evidence:

Respondent's Ex. Y—List of bonds held by individual members of the Committee.

H. P. Sargent is called, sworn, and testifies on direct examination by Attorney Downey and on cross examination by Attorneys Childers and Clark. The following exhibit is offered and admitted in evidence:

Petitioner's Ex. 38—Pages 333 to 339 inclusive of Ex. O For Ident.

At 12 o'clock noon the Petitioners rest, and Court recesses until 2 o'clock P. M. At 2 o'clock P. M. Court reconvenes, and all being present as before,

E. E. Neel, resumes the stand and testifies further on examination by Attorney Chase, and the following exhibits are offered and admitted in evidence:

Respondent's Ex. Z—Copy of Balance Sheet No. 1 (11/1/38),

Respondent's Ex. AA—Copy of Balance Sheet No. 6,

Respondent's Ex. BB—Four (4) trade sheets "Elworthy & Co."

Attorney Clark moves to strike Petitioner's Ex. 9, but the said motion is denied; and Attorney Clark also moves to strike Petitioner's Ex. 6, but the said motion is denied, and exception noted.

E. E. Neel resumes the stand and testifies further on direct examination by Attorney Chase, and the following exhibit is offered and admitted in evidence:

Respondent's Ex. CC—Copy of Balance Sheet No. 5.

Attorney Childers offers testimony of Carl A. Heinze from transcript, page 290 and reads the same to the Court. The following exhibits are offered and admitted in evidence:

Respondent's Ex. DD—Study of Power Plant 1902-1935,

Respondent's Ex. DD-1—Study of Power Plant 1902-1938.

Attorney Childers reads testimony of Louis C. Hill from transcript, page 327. The following exhibits are thereupon offered and admitted in evidence: [137]

Respondent's Ex. EE—Copy of Contract, dated 2/21/24,

Respondent's Ex. FF—Copy of Map (re Ex. No. 24),

Respondent's Ex. GG—Sheet re "Matured Bonds",

Respondent's Ex. HH—Report, dated 2/15/35,

Respondent's Ex. II—Copy of Map of Merced County,

Respondent's Ex. JJ—Printed Table Taxes and Assessments,

Respondent's Ex. KK—Statement re bonds,

Respondent's Ex. LL—Statement re extracts from Tax Reports 1929-1936,

Respondent's Ex. MM—Petition in Case No. 3907-Bkey.

Respondent's Ex. NN—Pages 41 to 54 of Ex. O For Ident.,

Respondent's Ex. OO—Pages 283-339 of Ex. O For Ident.,

Respondent's Ex. O—Being the exhibit formerly marked for Identification.

Respondent's Ex. PP—Mandate, Case No. 3907-Bkey.,

Respondent's Ex. QQ—Copy of Decree of Dismissal, Case No. 3907-Bkey.,

Respondent's Ex. RR—Copy of Bulletin No. 21 (1929),

Respondent's Ex. SS—Copy of Minute Order 10/25/37,

Respondent's Ex. TT—Copy of Petition in Intervention, Case No. 11,604, Superior Court, County of Merced,

Attorney Cook reads testimony of George F. Covell to the Court, and the following exhibits are offered and admitted in evidence.

Respondent's Ex. UU—Bulletin No. 21-H (1936),

Respondent's Ex. VV—Copy of Report of District to R. F. C.

Attorney Childers reads testimony of J. Alfred Swenson to the Court from Reporter's transcript, page 345, and the following exhibits are offered and admitted in evidence:

Respondent's Ex. WW—Copy of Chart of Bondholders' Loss,

Respondent's Ex. XX—Copy of Table II,

Respondent's Ex. YY—Excerpts of Bulletin 34,

Respondent's Ex. ZZ—Copy of Table I, II & V,

Respondent's Ex. AAA—Copy of extracts of soil survey.

At 4:55 o'clock P. M. the Respondents rest. Attorney Cook moves to dismiss Petition and Attorney Hooey moves to strike, and the said motions are denied.

At 5:10 o'clock P. M. it is ordered that the case be submitted and that the matter be hereby continued to November 30, 1938, at 9 o'clock A. M. for argument. [138]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno on Wednesday the 30th day of November in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 4818-Bkey.

In the Matter of

MERCED IRRIGATION DISTRICT

Debtor.

No. 4575-Bkey.

In the Matter of

LINDSAY-STRATHMORE
IRRIGATION DISTRICT,

Debtor.

No. 4632-Bkey.

In the Matter of

JAMES IRRIGATION DISTRICT,

Debtor.

No. 4633-Bkey.

In the Matter of

RECLAMATION DISTRICT No. 1606,

Debtor.

The above entitled matters coming on at this time for consolidated argument, and counsel appearing as follows: (in No. 4818) Stephen W. Downey, C. Ray Robinson and Hugh K. Landram, Esqs., for the Debtor; Chas. L. Childers, Esq., for West Coast Life Insurance Co.; Newell J. Hooey, Esq., for Pacific National Bank of San Francisco; Peter tum Suden, Esq., for Minnie E. Rigby, et al.; W. Coburn Cook, Esq., for Milo J. Bekins, et al.; L. F. Chase, Esq., for R. D. and Belle Crowell; George Clark, Esq., for Mary E. Morris; David Freidenrich, Esq., for Claire S. Strauss; and * * * and A. H. Bargion being present as official court reporter, and it is ordered that the argument proceed, whereupon, * * *

At 5:30 P. M. the arguments are closed, and it is ordered that all parties may have five days to file any points and authorities; and it is ordered that the four above entitled cases now stand submitted [139] for decision.

[Title of District Court and Cause.]

STIPULATION

It appearing that through inadvertence on the part of W. Coburn Cook, attorney for F. F. G. Harper and W. S. Jewell, creditors of the Merced Irrigation District, their names and claims were not included in the answer and claims filed by said counsel for his other clients in this cause.

It is stipulated that F. F. G. Harper and W. S. Jewell are the owners of bonds of the original issue of said district with attached coupons in the principal amounts as follows: F. F. G. Harper, \$1000.00, W. S. Jewell, \$5000.00, and they may be deemed to have appeared and answered the petition herein and to have adopted the answer of Milo W. Bekins, et al, in this cause and that they may deem to have appeared at the hearing of the petition subject to the evidence produced, objections, ruling and exceptions at said hearing.

W. COBURN COOK,
Attorney for F. F. G. Harper and
W. S. Jewell.

HUGH K. LANDRAM,
C. RAY ROBINSON,
STEPHEN W. DOWNEY,
Attorneys for Merced Irrigation
District.

[Endorsed]: Stipulation Filed Dec. 19, 1938.

[140]

[Title of District Court and Cause.]

ORDER

The foregoing stipulation is approved and it is ordered that F. F. G. Harper and W. S. Jewell, creditors of the above named district, be deemed to have appeared and answered the petition herein and to have adopted the answer of Milo W. Be-

kins, et al, and to have appeared at the hearing of the petition, subject to the evidence produced objections, rulings, and exceptions of said hearing.

Dated: December 19th, 1938.

PAUL J. McCORMICK,

U. S. District Judge.

[Endorsed]: Order Filed Dec. 19, 1938. [141]

[Title of District Court and Cause.]

RESPONDENTS' PROPOSED MODIFICATION
OF PLAN

In response to the suggestion of the Court that counsel for objecting creditors submit a proposed modification of the plan offered by the District, the undersigned counsel state that they have conferred together, and with their clients, and have agreed upon a modification which is believed to be fair and equitable to all parties and one which will finally terminate the case. Mr. Cook was unable to contact all of his clients, but he has conferred with a majority in amount who have agreed to this proposed modification. It is believed that substantially all of the respondents will agree to this proposal. [142]

We feel that in light of the evidence in this case, the plan proposed by the District is unfair and that the District could, without any undue burden, pay

upon its bond debt, a substantial sum in addition to the amount proposed. It is our opinion that a plan which will do absolute justice to all has been rendered almost impossible of accomplishment, not by any act of the respondents, but by the act of the Reconstruction Finance Corporation and the District in closing the escrow, so to speak, before the transaction with all bondholders was completed.

Without waiving any defenses, pleas, or bars which we have raised such as *res adjudicata*, jurisdiction, pendency of the state proceeding, that R. F. C. is not an owner, and that the R. F. C. is not materially affected by the plan, together with all other defenses raised and objections made, and without waiving the right to appeal, in the event a modification of the plan satisfactory to objecting creditors respectively represented by the undersigned is not made with the approval of the Court after hearing as provided for in the Act, accepted by petitioner, and otherwise made effective, we suggest as a means of accomplishing substantial justice as to respondents, after three trials and one appeal over the course of the last four years, that the plan be modified to enable each respondent severally to retain his original bonds, without change except that the interest therein called for be reduced to three (3%) per cent and the bonds stamped to such effect. The principal amount of the several original bonds to be paid in full to the holders thereof on the respective due dates, except

those that are now past due and such past due bonds to be severally paid in full within a reasonable time with interest at the rate of three (3%) per cent per annum from due date until paid.

The foregoing suggestion involves a reduction of the current charges of the District for interest on one and one-half million dollars principal amount of bonds held by respondents, which would [143] approximate a saving of Forty Thousand (\$40,000.00) Dollars per annum, and a cancellation of past due indebtedness of approximately one-half of the matured interest to date, or a cancellation of about Two Hundred Seventy-five Thousand (\$275,000.00) Dollars of such past due interest. The future savings to the District on interest for the life of the bonds will approximate Five Hundred Twenty Thousand (\$520,000.00) Dollars, or a total saving over the life of the bonds of about Eight Hundred Thousand (\$800,000.00) Dollars.

The respondents feel that as original financiers of the District they should not be summarily paid off at an inordinate discount, but should be permitted to accept the substantial discount as indicated above in the form of a reduction in interest over a period of time, rather than in cash.

Dated: this 10th day of December, 1938.

Respectfully submitted,

CHARLES L. CHILDERS

per LUCIUS F. CHASE

PETER TUM SUDEN

per LUCIUS F. CHASE

W. COBURN COOK

per LUCIUS F. CHASE

HUGH K. McKEVITT

per LUCIUS F. CHASE

HERMAN PHLEGER

per LUCIUS F. CHASE

DAVID FRIEDENRICH

per LUCIUS F. CHASE

LUCIUS F. CHASE

[Endorsed]: Filed Jan. 10, 1939. [144]

[Title of District Court and Cause.]

MINUTE ORDER

Honorable Paul J. McCormick, Judge.

All rulings made during the hearing of this matter are adhered to and confirmed. Exceptions allowed on all adverse rulings.

Findings of Fact, Conclusions of Law and Decree ordered for Merced Irrigation District confirming plan of composition of debts pursuant to

Chapter IX of Bankruptcy Act upon all issues of debtor's petition, filed June 17, 1938, and answers and objections of nonconsenting creditors. Exceptions allowed each answering and objecting creditor.

Attorneys for Merced Irrigation District will prepare and present under the rules Findings of Fact, Conclusions of Law and Decree in accordance with this order pursuant to directions contained in written "Conclusions of the Court" filed herein this day.

Dated January 10, 1939. [145]

[Title of District and Cause.]

CONCLUSIONS OF THE COURT

Merced Irrigation District, hereinafter called "the District," pursuant to Chapter IX of the Bankruptcy Act of 1938, has filed its petition for confirmation of a plan of composition of bond indebtedness. The constitutionality of the provisions of the Bankruptcy Act that are invoked by the District is unquestionable. *United States v. Bekins*, 304 U. S. 27.

The factual basis for the application to effect a composition of its bonded indebtedness of \$16,190,000 principal and about \$6,000,000 accrued and unpaid interest by scaling such debt structure to approximately \$8,338,000 with interest at 4 per cent.

from about October 1, 1935, is the utter inability of the District to service the outstanding bonds under applicable laws of the state of California, and it is clear from the record before us that if the debt structure of the District includes the original and uncanceled bonds, the District is hopelessly insolvent and the land owners within it will ultimately be in similar situations.

The primary question then to be determined is the status in this proceeding of the Reconstruction Finance Corporation, which for brevity will be designated as "R. F. C." This agency of the United States has acquired and now controls more than 90 per cent. of the bonds of the District, and its consent to the District's plan of debt reduction accompanies the petition. Is it a creditor of the District owning securities affected by the plan of debt composition? We think the question must be answered in the affirmative.

Section 82 of the Act under consideration (50 Stat. 653), defining [146] various entities that are involved in the debt composition proceedings of irrigation districts, states that

"The term 'creditor' means the holder of a security or securities.",

and that

"Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be

deemed a creditor in the amount of the full face value thereof.”,

and further that

“The term ‘security affected by the plan’ means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.”

The clear effect of the evidence justifies the conclusion that the R. F. C. is a creditor and bondholder to the principal amount of \$14,702,000 and accumulated interest on such outstanding bonds of the District as the R. F. C. now has under its control. The record shows that the R. F. C. has paid to the former owners of the bonds \$515.01 for each \$1.000 bond. Unconditional bills of sale have been regularly executed by the former owners or agents of former owners to the R. F. C. upon the acquisition of \$14,071,000 of the bonds, and of the remaining \$631,000 of the bonds bought by the R. F. C. a formal bill of sale was waived by it on delivery to it of the bonds upon payment by it to the former owners of the agreed price.

All of the bonds that have been so acquired have been, subsequent to delivery, duly registered in the name of the Reconstruction Finance Corporation as owner thereof, and all of such bonds at all times since their delivery to the agent and designated de-

pository of the purchaser have been subject to the sole control of the R. F. C.

It is true that concurrently with the transactions whereby the bonds were purchased, the R. F. C. agreed to loan and did conditionally loan for the benefit of the District approximately \$7,600,000. This money, however, was disbursed not to the District but to the former bond owners. [147] The financial arrangement was not merely a matter of the lender, upon the collateral security of outstanding bonds, advancing money to the borrower upon the promissory note of the borrower to repay with interest at the rate of 4 per cent. per annum, but the chief purpose and specific mutual intent of the agreement, as reflected in the writings, resolutions and transactions, was to effect a retirement of the outstanding bonds, and upon a situation being available whereby this could be done, to the satisfaction of the R. F. C., the District was to issue and deliver new refunding bonds to the R. F. C. for the amount of its cash outlay, with interest at 4 per cent. per annum, at which time the R. F. C. would surrender its presently possessed bonds for retirement, and the bond debt of the District would be reduced accordingly. No one can read the record of the negotiations between the governmental agency and the insolvent District and its security holders and fail to conclude that the paramount, imperative and essential feature of the contract was the ultimate and not the immediate retirement of the outstand-

ing bonds which the R. F. C. acquired. This was the objective of the deal, and the failure to attain it renders the whole refinancing project that was agreed to, insecure and dubious. To adopt a contrary interpretation of the agreement would defeat the purpose which the parties who made it sought to accomplish. This must be avoided. If such is the intention of the parties to the contract, it is obvious that the R. F. C. is a creditor whose security is affected by the plan under consideration.

In other words, we think that the clear intent of the parties to the transaction whereby the advancement of money sufficient to retire the outstanding bonds, none of which were owned by the District, was that such bonds as were relinquished and sold to the R. F. C. in the debt readjustment project were to be kept alive and available for further protection of the lender until such time as the R. F. C. concedes that the contractual scheme of refinancing the District pursuant to the agreement is complete. This scheme is definitely predicated upon the ultimate merger of all affected outstanding obligations into the later and new security insuring to [148] the R. F. C. under the various writings and documents that have been introduced into the evidence and which constitute the contract. See *In Re Drainage District No. 7* (D. C. Ark.) decided August 25, 1938; *Slupsky v. Westinghouse Electric & Mfg. Co.* (C.C.A. 8) 78 F. (2d) 13, and compare *Security-First National Bank v. Rindge Land & Navigation*

Co. (C.C.A. 9) 85 F. (2d) 557; *Mowry v. Farmers Loan & Trust Co.* (C.C.A. 7) 76 Fed. 38. The event, upon the happening of which the outstanding bonds would, under the contract, cease to be existing obligations of the district, has not yet occurred, and therefore all of such outstanding bonds constitute present obligations to the face value thereof and must be so regarded in evaluating the financial condition of the District in the plan of debt composition before this court.

And notwithstanding the time of acquisition of bonds by the R. F. C., the clear language of subparagraph (j) of Section 83 of the Bankruptcy Act of 1938 conclusively determines the proprietary status of the R. F. C. over the bonds surrendered by consenting bondholders and delivered to the R. F. C., as well as the right of the R. F. C. to have the bonds that were acquired by the disbursement of its money included in the counting of the consenting creditors in determining the percentage of the securities affected by the plan of composition submitted by the District. Sub-paragraph (j) of Section 83 reads:

“The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this Act by the exchange of new evidences of indebtedness under the plan for evidence of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred

before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this Act, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition.”

Much of the argument advanced by the minority groups of objecting bondholders overlooks the chief governmental purpose of the Congress in enacting Chapter IX of the new Bankruptcy Act, beside leaving out of [149] consideration the manifest intent of the R. F. C. as shown by the documentary evidence in extending the loan with which it was made possible for the District to continue to function as an irrigation district under prevalent economic and agricultural conditions and the laws of the state of California. Both of these governmental agencies operated to forestall collapse of the District that was imminent under the record before this court. When the District went into default upon its bonds and before the R. F. C. approved the conditional loan to the District, its bonds were selling for eighteen cents on the dollar.

Under applicable statutes of the State of California, in the last analysis the bond owner in an irrigation district depends upon the earning or

producing power of the land within the district for any return upon his investment or payment of his bond. The evidence before us shows that at the time default occurred in the bonds in 1933 the land of the District as a whole did not and could not be made to pay its cost of operation and consequently the land owners were unable to pay the assessments to service the bonds. This condition of delinquency continued and even became more aggravated by pyramiding unpaid assessments under applicable state laws year after year, until shortly prior to the availability of the plan embodied in the petition now before this court it had reached an aggregate delinquency of 62 per cent. It was undoubtedly this impoverished condition of the District that kept depreciating the bonds. And according to credible testimony at the hearing, the productivity of the land within the District, and its revenue, is little, if any, better than it was in 1933 when the defaults in the bond indebtedness commenced.

But it is argued, assuming that the R. F. C. is the owner and holder of about \$14,702,000 of existing and outstanding bonds which have been relinquished and voluntarily transferred by their former owners, the plan should be held to be unfair and inequitable to the bondholders who held out and are now before the court opposing the plan of settlement, because, they assert, the present financial condition of the District does not justify such

an extreme paring of the debt structure as the plan accomplishes. [150] We think this contention loses its force when consideration is given to the fact that it was the more than 90 per cent. of the bondholders who took advantage of the R. F. C. composition agreement and transaction which made it possible for the District to save itself from financial ruin and thereby to a major degree brought about the present fiscal situation which the records in evidence show exists in the District. These conclusions are more than justified by the Benedict testimony and report and by the evidence of the witness Momberg. In our opinion there can be little doubt that under the record, if the loan from the Reconstruction Finance Corporation had not been negotiated, the outstanding bonds of the dissenting bondholders would be worth much less than the price that can now be received by them under the plan that is before us for consideration. We consider as most forceful, irrefutable evidence of the fairness of the plan the indisputable fact that more than 90 per cent. of the invested capital in the bonds of the District has taken advantage of it. The legal requirement of debt composition under Chapter IX of the Bankruptcy Act has been exceeded by nearly 25 per cent. of the affected invested capital.

A proposal of dissenting bondholders asks this court to modify the plan under consideration by giving them 100 per cent. of the principal of their

bonds respectively and in addition approximately one-half of the interest that has accrued under their bonds according to the terms thereof since July 1, 1933. This, if adopted by the court, would enable less than 10 per cent. of the bondholders of the District to reap an unjust enrichment at the expense of more than 90 per cent. of the same class of bondholders who have accepted the plan and who have voluntarily ended any control over their bonds for approximately fifty cents on the dollar. Such is undoubtedly the effect of the proposal of the nonconsenting bondholders, because under it they are permitted to retain the outstanding bonds which they now own or control and merely conditionally agree to accept a reduction of interest on all coupons, matured and unmatured, to 3 per cent. per annum in lieu of $5\frac{1}{2}$ or 6 per cent. stipulated in the bonds. We believe the suggested modification to be inequitable, discriminatory, illegally [151] preferential and unjust. It not only financially penalizes approximately 91 per cent. of the bondholders who consented to the plan before the court, and for no reason except that such bondholders did consent, and thereby contributed to bring about the present improved outlook for the District, but it also classifies the bondholders of the Merced Irrigation District into two groups or classes, when in equity and fair treatment in a composition under the Bankruptcy Act of 1938 all of such bondholders

should be considered on an equality and dealt with on parity. We also believe that the court by approving the suggested change would jeopardize if not injuriously upset present and prospective necessary improvements in the District, throw its entire contractual arrangement with the Reconstruction Finance Corporation into uncertainty, and encourage unjustifiable delay in the adjustment and settlement of the financial status of the District. The R. F. C. has signified no willingness to advance more money to the retirement of the bonds than it has under the contract already made, and it cannot be required to do so by this court. We cannot alter the agreement under which the District and all financially interested in it were saved from forced liquidation which would have caused greater loss than the bond investors are to take under the plan.

We think it a fair deduction from the evidence to state that the current hopeful fiscal condition of the District is attributable, as already stated, primarily to the money advanced by the R. F. C. which was conditionally paid for the purpose of preventing the collapse of the District by supplying money for the retirement of the outstanding bonds, so as to substantially reduce the bonded indebtedness, and secondarily to a providential water supply during the last two or three years which has enabled the District to earn unprecedented revenue from its power facilities. But the experiences of the past,

as shown by the record before us, do not warrant a finding that power revenue conditions similar to those existing will continue in the future, and it would be injudicious to venture the further financial ability of the District to meet its obligations upon problematical water sources or conditions. This would be too dubious a [152] situation to warrant adoption by the court.

There are, we think, but two further contentions of the dissenting bondholders which require discussion. These may be disposed of briefly.

Prior to the institution of this proceeding the District, in line with recurring attempts to extricate itself from impending financial destruction occasioned by uncollectible tax requirements to service its bond obligations, sought to avail itself of an Act of Congress (30 Stat. 544), providing for the readjustment of the debt of political subdivisions of the state. The purpose of such action was effectively the same as the proceeding now before the court. After hearing and consideration, this court on March 6, 1936, held that the plan which is again submitted was fair, equitable and non-discriminatory to all bondholders and creditors affected thereby, and the court at that time entered a decree so adjudging and directing confirmation of the plan, which required the minority dissenting bondholders, who are again opposing the plan set forth in the present petition, to partici-

pate and accept \$515.01 for each \$1,000 bond and coupons.

From such decree, the dissatisfied group of investors took an appeal to the Ninth Circuit Court of Appeals, and before the same could be heard therein, the United States Supreme Court in *Ash-ton vs. Cameron County Water Improvement Dis-trict*, 298 U. S. 513, declared the Congressional leg-islation, under which the proceeding was com-menced and decided, to be unconstitutional.

Thereafter, upon motion of appellants for re-versal of the decree of this court, based and stated to be solely and entirely upon the Supreme Court decision of unconstitutionality of the statute au-thorizing the proceeding, the appellate court grant-ed the motion and pursuant thereto reversed the decree of the District Court and by mandate di-rected this court to dismiss the entire cause. 89 F. (2d) 1002. A petition for the writ of certiorari was denied by the Supreme Court. 302 U. S. 709.

The nonconsenting bondholders contend that the judgment of dismissal in the earlier proceeding is a conclusive determination that adjustment of [153] debtor-creditor relations represented by the dissenters' bonds is beyond the bankruptcy power of Congress, and that this court cannot be given jurisdiction to make such readjustment. The ar-gument stated in other terms is that the doctrine of *res judicata* is applicable to this proceeding be-

cause the parties are the same as well as the subject matter and the relief sought, as was the case in the former void action.

We think the plea of former adjudication is not available. The court in the proceeding under the unconstitutional law functioned in an utterly powerless environment. Its processes *ab initio* were *coram non judice*, and had no force or authority. The sole basis for judicial action is law, and if there be none, as was the case in procedure under the ineffectual and void Section 80 of the Bankruptcy Act, the assumed court action is a nullity and neither confers nor withdraws rights.

The impotency of the court under the old Act of Congress to affect in any way the status of debt structure of the District necessarily leaves the subject matter of debt composition open and undecided. It is still within the legislative field of Congress under the bankruptcy clause of the Constitution. *United States v. Bekins*, 304 U. S. 27; *Adair v. Bank of America*, 303 U. S. 350. In other words, as has been so aptly expressed by the Supreme Court in *Manhattan Life Ins. Co. v. Broughton*, 109 U. S. 121,

“A trial upon which nothing was determined cannot support a plea of *res judicata*, or have any weight as evidence at another trial.”

We think that not only was the judgment in the former proceeding wholly void because not based

upon law, but by the same token we are confident that the court had no jurisdiction whatever in the matter. Under such circumstances *res judicata* cannot be invoked in the later action, for as the Supreme Court, speaking through Justice Holmes in *Murray v. Pocatello*, 226 U. S. 318, said,

“Of course, if the court was not empowered to grant the relief whatever the merits might be, it could not decide what the merits were.”

The final plea of the objecting bondholders is that because of the filing and prosecution by the District of a proceeding in the Superior [154] Court of Merced County, State of California, under an Act of the Legislature of California, passed in 1937 and officially known in short title as “Irrigation District Refinancing Act” (Stat. Cal. 1937, Ch. IV), this court has no jurisdiction to proceed with the hearing and determination of this matter.

The action was filed on or about July 27, 1937, and prior to the enactment of the Congressional legislation upon which this federal court proceeding is based. Its object was to effectuate under the aforesaid state law the same plan that is the basis of this proceeding pursuant to Chapter IX of the Bankruptcy Act, and the identical parties appear in the two forums.

The matter proceeded to hearing in the state court and over objections of dissenting bondholders, who now oppose this proceeding, the Superior

Court on March 10, 1938, held the state law to be valid and constitutional and directed that findings and an interlocutory judgment confirming the plan be entered pursuant to Section 8 of the state act. No findings or judgment have been entered, and nothing further has been done in the state proceedings. The matter is still pending therein.

This bankruptcy proceeding was filed in this court June 17, 1938.

We believe there is a serious question as to the constitutionality of the California "Irrigation District Refinancing Act." It comes very close to impairing, if it does not actually impair, the obligations of contracts, and thereby transcends state legislative power; United States Constitution, Art. I, Sec. 10 a 1; *In Re Imperial Irrigation District*, 10 F. Supp. 832; but we are not disposed to consider the constitutionality of the state law until the California courts of appeal have considered and passed upon it. *In Re Boswell*, 20 F. Supp. 748. Moreover, we think it unnecessary to pass upon the validity of the state law, as we think there can be no merit in the objections to this court's jurisdiction under the broad grant of national power in debt composition matters.

The constitutional power of Congress to establish "uniform laws on the subject of bankruptcies throughout the United States" is paramount to [155] powers of the states and it is firmly established in the United States that the "subject of

bankruptcies'' is nothing less than the subject of the relations between an insolvent or nonpaying debtor and his creditors, extending to its or their relief. *Continental Bank v. Rock Island Railway* 294 U. S. 648.

And when the jurisdiction of the federal court is constitutionally invoked under an existing Act of Congress relating to the subject of bankruptcy, as it has been in this proceeding, it is exclusive of all other courts; *U. S. Fidelity, etc., Co. v. Bray*, 225 U. S. 205; and particularly is this the case when, as here, the state court has not proceeded to the making of any findings of fact or to the entry of any decree adjudging or purporting to adjudge rights.

A court of bankruptcy itself is powerless to surrender its control of the administration of the estate. *Isaacs v. Hobbs Tie & T. Co.*, 282 U. S. 734; *Moore v. Scott* (C.C.A. 9) 55 F. (2d) 863; *In Re A. C. Wagy & Co.* (C.C.A. 9) 20 F. (2d) 638.

We think that the state court proceeding from any point of view is wholly immaterial to this bankruptcy matter.

Certain of the objecting bondholders argue that the plan under consideration is unfair and not for the best interest of the creditors of the District because it discriminates in favor of owners of other bonds issued by cities, drainage districts and school districts which lie within the area of the Merced

Irrigation District and whose obligations are unimpaired by this proceeding. It is similarly argued that the same situation exists as to the obligations incurred by mortgages and deeds of trust upon lands within the District, none of these securities being included in the plan.

The aggregate amount of other outstanding bonds, as far as it is ascertainable from the exhibits in evidence, is relatively so small as compared with the outstanding bonds of the District, and the land within the District affected by such other outstanding bonds is so ununiform in relation to the area covered by the outstanding bonds of the District, as to make it impracticable and inadvisable to require that such other obligations [156] be taken into account in this proceeding before the plan under consideration is approved. And as far as the obligations of mortgages and trust deeds are concerned, we think that claims based upon them are clearly not to be classified the same as obligations evidenced by bonds which are serviced by assessments levied under taxing processes. The lien claims and rights of such securities are entirely dissimilar to bond obligations, under applicable laws of the State of California. If these collateral debts in the District must be considered and readjusted before a composition of the bond indebtedness of the District itself can be accomplished, the delay and difficulties attendant on such matters will destroy the efficacy

of Chapter IX of the Bankruptcy Act as far as the Merced Irrigation District is concerned.

In conclusion, after deliberate consideration of the entire record in this proceeding, we find that the plan of Merced Irrigation District for the composition of its debts under Chapter IX of the Bankruptcy Act of 1938, as alleged in the petition filed June 17, 1938, and as disclosed at the hearings in this court, is lawful in every respect, fair, equitable, and for the best interest of all creditors, and does not discriminate unfairly in favor of any creditor or class of creditors. The plan is accordingly confirmed.

Attorneys for the petitioner will prepare and present appropriate Findings of Fact, Conclusions of Law, and interlocutory Decree confirmatory of the plan embodied in the petition.

Dated January 10th, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Conclusions of the Court. Filed Jan. 10, 1939. [157]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE OBJECTIONS AND EXCEPTIONS.

It is hereby ordered that petitioners may have to and including Monday, the 13th day of Febru-

ary, 1939, within which to file objections and exceptions to proposed findings and decree of petitioner, and in which to submit proposed findings of defendants, in the above entitled cause.

Dated: February 6, 1939.

PAUL J. McCORMICK,

District Judge.

[Endorsed]: Filed Feb. 7, 1939. [158]

[Title of District Court and Cause.]

CERTIFIED COPY OF RESOLUTION OF
BOARD OF DIRECTORS OF MERCED IR-
RIGATION DISTRICT CONSENTING TO
THE PLAN OF COMPOSITION OF BOND
INDEBTEDNESS.

CERTIFIED COPY OF RESOLUTION OF IN-
TENTION TO ADOPT RESOLUTION.

AFFIDAVIT OF PUBLICATION OF NOTICE
OF INTENTION OF BOARD OF DIREC-
TORS OF MERCED IRRIGATION DIS-
TRICT TO ADOPT RESOLUTION.

AFFIDAVIT OF POSTING NOTICE OF IN-
TENTION OF BOARD OF DIRECTORS
OF MERCED IRRIGATION DISTRICT TO
ADOPT RESOLUTION. [159]

RESOLUTION

Whereas the Merced Irrigation District did here-
tofore on the 17th day of January, 1939, by reso-

lution give notice of its intention to adopt a resolution consenting to and confirming and approving the plan of composition of bond indebtedness as set forth in the petition of the Merced Irrigation District filed in the District Court of the United States in and for the Southern District of California, Northern Division, in proceeding Number 4818 in Bankruptcy, entitled "In the Matter of the Merced Irrigation District, Debtor, Petition for Confirmation of a Plan of Composition of Bond Indebtedness," and

Whereas the time and place set for hearing upon said matter was and is Tuesday, the 24th day of January, 1939, at the hour of ten o'clock A. M., of said day, at the office of the Board of Directors of the Merced Irrigation District at 1423 "L" Street, in the City of Merced, County of Merced, State of California; and

Whereas due notice as provided in said resolution of January 17, 1939, was duly given; and

Whereas the said matter was duly considered and a hearing held at said time and place pursuant to said resolution of January 17, 1939.

Now, therefore, be it resolved that the Merced Irrigation District does hereby consent to and approve and adopt the plan of composition of bond indebtedness as set forth and outlined in the plan and petition of the Merced Irrigation District in said cause Number 4818, pending in the District

Court of the United States, in and for the Southern District of California, Northern Division.

[160]

I, H. P. Sargent, Secretary of the Merced Irrigation District, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of said District at a regular adjourned meeting held on the 24th day of January, 1939, by unanimous vote.

In witness whereof, I have hereunto affixed my hand and the seal of the said District, this 24th day of January, 1939.

[Seal]

H. P. SARGENT,

Secretary Merced

Irrigation District. [161]

NOTICE OF INTENTION OF BOARD OF DIRECTORS OF MERCED IRRIGATION DISTRICT TO ADOPT RESOLUTION ON JANUARY 24, 1939.

RESOLUTION

Whereas the Merced Irrigation District heretofore adopted a plan of composition of bond indebtedness relative to its outstanding bonds, which plan contemplates the issuance of refunding bonds, and said District heretofore presented its petition to District Court of the United States, in and for the Southern District of California, Northern Di-

vision, in proceedings Number 4818, in Bankruptcy, for the approval of said plan. Said proceeding is entitled "In the Matter of the Merced Irrigation District, Debtor, Petition for confirmation of a Plan of Composition of Bond Indebtedness." Hearings thereon have heretofore been had before Honorable Paul J. McCormick, United States District Judge, who on January 10, 1939, filed in said court and proceeding written "Conclusions of the Court" and his order for preparation of a decree confirming and approving said plan of composition, and the Merced Irrigation District intends to adopt a resolution consenting to and confirming and approving said plan of composition of bond indebtedness as set forth in said petition.

Now, therefore, be it resolved that the Merced Irrigation District hereby gives notice of its intention to adopt a resolution consenting to and confirming and approving said plan of composition of bond indebtedness, and of the fact that by said plan of composition of bond indebtedness it is proposed to levy special assessments or reassessments or special assessment taxes upon real property in the amounts and in the manner required by said plan of composition of bond indebtedness set forth in said petition to said United States District Court.

[162]

Notice is hereby given that Tuesday, the 24th day of January, 1939, at the hour of ten o'clock in the forenoon of said day, is hereby fixed as the

time, and the office of the Board of Directors of the Merced Irrigation District, at 1423 "L" Street, in the City of Merced, State of California, is hereby fixed as the place, when and where all persons interested in any such assessments or reassessments or special assessment taxes will be heard by the Merced Irrigation District. Said time is hereby declared to be a reasonable time for such hearing, and notice thereof shall be given in the following manner which is hereby declared to be a reasonable manner for the giving of said notice as follows to-wit: By the publication of a copy of this resolution in the Merced Sun Star, a newspaper of general circulation, printed and published in the City of Merced, County of Merced, State of California, for a period of five (5) days prior to said hearing, and by the posting of a copy of this resolution in three (3) public places in the County of Merced, State of California, which said notices shall be posted five (5) days prior to the date and time of said hearing. Copy of this resolution shall be, and same is hereby declared to be, and shall constitute notice of said hearing. Said hearing will be held before the Board of Directors at said time and place, and all persons interested will be heard in reference to any assessments or reassessments or special assessment taxes called for under said plan of composition of bond indebtedness of said refunding bonds. The determination of the Merced Irrigation District and its Board of Directors at such hearing shall be and constitute its

final determination approving and consenting to said plan of composition of bond indebtedness for the purpose of obtaining the final decree and order of the District Court of the United States confirming said plan of composition of bond indebtedness. [163]

This is to certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of said District at a regular adjourned meeting held on the 17th day of January, 1939, by unanimous vote.

In witness whereof, I have hereunto affixed my hand and the seal of the said District, this 17th day of January, 1939.

[Seal]

H. P. SARGENT,

Secretary Merced

Irrigation District. [164]

AFFIDAVIT OF PUBLICATION

State of California,
County of Merced—ss.

Dorothy L. Solis being duly sworn, deposes and says: I am now, and at all times herein mentioned have been a resident of the City of Merced, Merced County, State of California, a citizen of the United States and State of California, and over the age of 21 years, and in no way or manner interested in the matter the subject of the annexed

notice. I am now and during all times herein mentioned Secretary of the Merced Sun-Star. That said Merced Sun-Star is and at all times herein mentioned was a daily newspaper of general circulation, printed and published at the City of Merced, Merced County, State of California. That the said newspaper is now and at all times herein mentioned has been printed and published upon each and every afternoon, except Sundays and certain legal holidays.

That the Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution on January 24, 1939, a copy of which is attached upon the left hand side of this page opposite to this affidavit, was printed and published in said newspaper and in every issue thereof from and including the 17th day of January, 1939, to and including the 23rd day of January, 1939. That is to say said notice was published in the issues of said newspaper on the following dates:

[165]

In the issue of January 17, 1939,	
In the issue of January 18, 1939,	
In the issue of January 19, 1939,	
In the issue of January 20, 1939,	
In the issue of January 21, 1939,	
In the issue of January 23, 1939,	
In the issue of	19
In the issue of	19
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DOROTHY L. SOLIS.

Subscribed and sworn to before me, this 24th day of January, 1939.

[Seal] LAURA MURPHY,
Notary Public in and for Merced County, State of
California. [166]

H. P. Sargent, being first duly sworn, deposes and says:

That he is the duly appointed and acting Secretary of the Board of Directors of Merced Irrigation District.

That pursuant to the provisions of the statute, he did on Tuesday, January 17, 1939, post in three (3) public places a certified copy of a resolution adopted by the Board of Directors of Merced Irrigation District on January 17, 1939, giving notice that on Tuesday, January 24, 1939, said Board intended to adopt a resolution consenting to and confirming and approving a plan of composition of bond indebtedness, and of the fact that by the plan

of composition of bond indebtedness it is required to levy special assessments or reassessments and special assessment taxes on real property in the amounts and in the manner required by said plan of composition of bond indebtedness, set forth in said petition in Bankruptcy in the United States District Court, said notice being posted in the following places, to-wit:

1. On Bulletin Board at Merced County Courthouse, City of Merced.
2. On Bulletin Board at Merced County Jail, City of Merced.
3. On Bulletin Board on the East side of "M" Street between 16th and 17th Streets, City of Merced.

Copy of said resolution so posted is hereto attached.

H. P. SARGENT,
Secretary Merced
Irrigation District.

Subscribed and sworn to before me this 18th day of January, 1939.

[Seal] P. BERTAINA,
Notary Public in and for the County of Merced,
State of California. [167]

[Endorsed]: Filed Feb. 13, 1939. [170]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW AND
DECREE

Come now respondents in the above entitled proceeding, and object to the proposed Findings of Fact and Conclusions of Law in the following particulars and upon the following grounds, to-wit:

I

Object to finding in Paragraph I that Merced Irrigation District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937, now designated as Chapter IX of the Bankruptcy Act of the United States.

II

Object to the finding in Paragraph I that the petition herein was filed pursuant to the provisions of said Act of August 16, 1937.

III

Object to the findings in Paragraph IV that the petitioner, Merced Irrigation District, is (1) insolvent, and (2) unable to meet its debts as they mature.

IV

Object to the findings that the plan of composition is (1) fair, (2) that it is equitable, (3) that it is for the best interests of the District's cred-

itors, and (4) that it does not discriminate unfairly against any creditor or creditors or class of creditors. [171]

V

Object to the finding that the plan of composition complies with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937.

VI

Object to the finding in Paragraph IV that before the filing of the petition herein, said plan of composition was accepted and approved in writing by and on behalf of creditors of petitioner owning and holding more than 75% of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims held, owned or controlled by petitioner.

VII

Object to each and all of the findings in Paragraph V, except the finding that before the filing of the petition herein, the Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

VIII

Object to all the findings in Paragraph VI.

IX

Object to all the findings in Paragraph VII, unless amended (1) by adding after the word "un-constitutional" in line 7, the words, "as applied to the facts before the court at said time", and (2) by eliminating therefrom the finding, "The court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court and that there was no judgment on the merits in said proceeding". Also object to the finding that the court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that the petitioner herein is not barred in this proceeding by res adjudicata or otherwise. [172]

X.

Object to the finding in Paragraph VII, line 4, page 8, commencing with the words, "The Court finds that said proceeding so dismissed," and ending with the words in line 5, page 8, "not barred in this proceeding by res adjudicata or otherwise."

XI.

Object to the finding in Paragraph VIII, line 3, page 9, reading as follows: "That said action pending in State Court does not prejudice or bar the commencement, maintenance, or prosecution of this proceeding."

Said objections are made upon the grounds (1) that the evidence in the case wholly fails to sustain

each and every of the findings objected to, and (2) upon the further ground that the evidence is insufficient to sustain each and every of the said findings objected to.

Respondents further object to the failure to find upon each and all of the several defenses raised in the several answers of the respondents hereto, and particularly upon the issues referred to in proposed findings submitted herewith.

Said objection is based upon the ground that the said matters hereinabove referred to are material to the determination of the cause herein, or properly at issue herein, and evidence thereon was duly introduced at the trial of the said cause and that said findings are necessary to the proper disposition thereof.

Respondents further object to the Conclusions of Law, particularly the conclusion that Merced Irrigation District is entitled to an interlocutory decree and judgment approving and confirming the plan of composition as proposed and presented, and the conclusion that said decree of confirmation shall become and be binding upon all creditors affected by the plan upon the terms set forth in the [173] Conclusions of Law.

Said objection to the Conclusions of Law is made upon the grounds (1) that said petitioner is not entitled as a matter of law to the relief described in said Conclusions of Law, and (2) that the facts are insufficient upon which to base such a conclusion, and (3) that the evidence is insufficient to

sustain the said Conclusions of Law, and (4) that the findings do not support the said Conclusions of Law.

XII.

Objection to Proposed Interlocutory Decree

Respondents further object to the proposed interlocutory decree submitted by petitioner herein in each and every respect in which respondents have objected to the proposed Findings of Fact and Conclusions of Law, and upon the same grounds and for the same reasons.

Request for Findings

Respondents further request Findings of Fact and Conclusions of Law and Decree to be entered herein, finding:

I

That the said Merced Irrigation District is not an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937, now designated as Chapter IX of the Bankruptcy Act of the United States.

II

That the petition herein was not filed pursuant to the provisions of said Act.

III

That the Merced Irrigation District is not insolvent, and that it is able to meet its debts as they mature.

IV.

That the plan of composition submitted by the petitioner is [174] (1) unfair, (2) inequitable, (3) not for the best interests of the District's creditors, (4) that it does unfairly discriminate against respondents and all others similarly situated.

V

That the plan of composition does not comply with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States.

VI

That the purported plan of composition was not accepted or approved in writing by and on behalf of creditors of petitioner owning and holding more than 75% of the aggregate amount of claims of all classes affected by such plan, excluding claims held, owned or controlled by petitioner, either before or after the filing of petition herein, and that such plan has not been accepted by any of the creditors affected by the plan.

VII

That the Reconstruction Finance Corporation does not own, hold or control approximately \$14,-702,000.00 principal of the outstanding \$16,190,-000.00 principal bond indebtedness of said District, but that the said bonds, in the amount of \$14,-702,000.00 are held by the Reconstruction Finance Corporation as collateral to a loan by the Merced Irrigation District, and said bonds are owned by

said District and in legal contemplation are cancelled.

VIII

That the allegations and averments set forth in the petition for the confirmation of the plan of composition of bond indebtedness are not true, and that the denials of said petition set forth in the answers of respondents are true.

IX

That the proposed findings in Paragraph VII be amended by adding after the word "unconstitutional" in line 7, the words, "as applied to the facts before the court at said time", and by eliminating therefrom the finding, "The court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court and that there was no judgment on the merits in said proceeding", and also by eliminating therefrom the finding that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that the petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise.

Petitioner further requests findings upon each and all of the several issues tendered by the several special defenses set forth in the several answers and/or objections of respondents and/or objectors herein, finding as alleged in each of the said several defenses in favor of respondents and objectors.

Petitioner further requests findings upon the motion to determine whether or not the Reconstruction Finance Corporation is a party materially affected by the plan proposed in these proceedings, finding that the said Reconstruction Finance Corporation is not a party materially affected by said plan.

Petitioner further requests that the court find and conclude as its Conclusions of Law that the Petition of the Merced Irrigation District herein be dismissed and judgment and decree be entered for respondents accordingly.

W. COBURN COOK, per L. F. C.

CHARLES CHILDERS, per L. F. C.

PETER TUM SUDEN, per L. F. C.

DAVID FREIDENRICH.

BROBECK, PHLEGER & HARRISON,

By.....

CLARK, NICHOLS & ELTSE,

By.....

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE.

[Endorsed]: Objections to Proposed Findings of Fact and Conclusions of Law. Filed Feb. 21, 1939. [177]

The foregoing six pages of typewritten matter was presented by Lucius P. Chase, Esq., on February 20, 1939, duly considered, and thereafter the

judge on this Feb. 21, 1939, made and filed Findings of Fact, Conclusions of Law, and Interlocutory Decree herein.

PAUL J. McCORMICK,

Judge. [176]

[Title of District Court and Cause.]

RESPONDENTS' PROPOSED ADDITIONAL
FINDINGS TO PETITIONER'S PRO-
POSED FINDINGS OF FACT AND CON-
CLUSIONS OF LAW.

IX

The Court further finds that the Reconstruction Finance Corporation, pursuant to a contract with the Merced Irrigation District, acquired and now has physical possession of bonds of the Merced Irrigation District in the principal face amount of \$14,702,000.00, by the terms of which contract the said Reconstruction Finance Corporation receives from the said Merced Irrigation District an assignment of certain of the power revenues of the Merced Irrigation District to be held in a separate fund for the purpose of repaying to the Reconstruction Finance Corporation the total of sums paid by the Reconstruction Finance Corporation for the acquisition of the said bonds of the Merced Irrigation District held by it, and interest thereon at 4% per annum, and that said sums so assigned to the said Reconstruction Finance Corporation

constitute a special fund not available to respondents herein or any other creditors owning bonds of the said Merced Irrigation District, and that said sums so set aside in the hands of the Merced Irrigation District payable to said Reconstruction Finance Corporation as of November 1, 1938, totaled \$1,049,992.98. That the said Reconstruction Finance Corporation has obligated itself to deliver the bonds held by it to the Merced Irrigation District upon the repayment to the said Reconstruction Finance Corporation by the Merced Irrigation District of the sums advanced by it to purchase the bonds held by it. That the said Reconstruction [178] Finance Corporation has received interest from the Merced Irrigation District on the amounts advanced to purchase the bonds held by the Reconstruction Finance Corporation at the rate of 4% per annum from the several dates of the advancements for the purchase of such bonds, and that the aggregate amount of interest so received by the said Reconstruction Finance Corporation as of November 1, 1938, was the sum of \$824,684.00 and that additional interest at the same rate is payable to the Reconstruction Finance Corporation by the said Merced Irrigation District semi-annually. That under the plan proposed herein the respondents shall receive interest at the rate of 4% per annum on the sum of \$515.01 for each bond deposited at the rate of 4% per annum only from the date such bonds are hereafter tendered by respondents for

sale until they respectively receive payment, and they shall receive no interest on such sum or any other sum prior thereto.

That the Reconstruction Finance Corporation, under the plan herein proposed and hereinafter made effective, will receive a return of all sums heretofore advanced by it with interest at the rate of 4% per annum; that the respondents herein and the bondholders of the said Merced Irrigation District, other than Reconstruction Finance Corporation, will receive a material reduction in the principal amount of their bonds, and in most cases will receive less than an amount paid therefor, and will receive no interest whatsoever excepting from a date subsequent hereto when they shall have tendered their bonds in accordance with the said plan.

X

That the said Reconstruction Finance Corporation constitutes a class separate and apart from respondents herein and all other bondholders.

XI

That the said Reconstruction Finance Corporation is a creditor of Merced Irrigation District but not materially affected by the plan of composition proposed. [179]

XII.

That the petitioner herein is an agency of the State of California. That the functions of the pe-

petitioner are exclusively governmental. That the petitioner holds no property and exercises no functions that are not governmental. That the issuance of the bonds sought to be refunded in this proceeding and the provisions for the payment thereof, and all procedure in connection with obtaining the funds therefore and the payment thereof, and the levying and collection of taxes for the payment thereof are all governmental functions of the petitioner. That the relief sought in these proceedings will affect and alter such functions and procedure.

XIII.

That the purported consent of the State of California granted by the Act of 1934 purporting to permit and authorize irrigation districts to institute bankruptcy proceedings related to proceedings under Section 80 of the Bankruptcy Act and not to proceedings under the Act of 1937 under which the proceedings herein are sought to be brought.

XIV.

That the petitioner herein is directly obligated for the payment of drainage district bonds which as of 1936 aggregated the amount of \$29,000.00, no reduction of which has been made or is contemplated. That said bonds are raised by a tax levy in the same manner as are the bonds herein sought to be refunded.

That in addition thereto said petitioner has obligated itself for the payment of several hundred

thousand dollars to the holders of Crocker Huffman contracts, being landowners within said Merced Irrigation District, the balance owing on said contracts at the present time amounting to approximately \$200,000.00. That no reduction has been made or is contemplated in amounts payable under said contracts.

That in addition thereto outstanding bond indebtedness of Merced County, the cities within the district and taxing districts [180] partly or wholly within Merced Irrigation District aggregates approximately \$1,500,000.00. That all of the bonds issued by said districts are in good standing and are currently being paid, and that no reduction has been made or is contemplated in any of such bonds. That all of said bonds are payable from taxes levied upon the same lands as are the taxes levied for the purpose of paying the bonds of the Merced Irrigation District. That said bonds have a market value generally in excess of par.

[Endorsed]: Respondents' Proposed Additional Findings to Petitioner's Proposed Findings of Fact and Conclusions of Law. Filed Feb. 21, 1939.

The foregoing was presented Feb. 20, 1939, by Lucius P. Chase, Esq., considered and thereafter the Judge on this Feb. 21, 1939 made and filed Findings of Fact, Conclusions of Law and Interlocutory Decree herein pursuant to Chap. IX of Bankruptcy Act 1938.

PAUL J. McCORMICK,

Judge. [181]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The petition of Merced Irrigation District for confirmation of a plan of composition of its bond indebtedness heretofore came on duly and regularly for hearing before this Court, said Irrigation District appearing by its counsel, C. Ray Robinson, Hugh K. Landram and Stephen W. Downey, and objectors appearing by counsel as follows: Messrs. Freidenrich & Selig and Kirkbride & Wilson, appearing for Claire S. Strauss; Messrs. Brobeck, Phleger & Harrison, appearing for Florence Moore, et al; Messrs. tum Suden and tum Suden appearing for Minnie Rigby and Richard tum Suden as executors, etc., of the estate of Wm. A. Lieber; Hugh K. McKevitt, Esq., appearing for Pacific National Bank of San Francisco; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; Clark, Nichols & Eltse appearing for Mary E. Morris; Chase, Barnes & Chase, Esqs., appearing for R. D. Crowell and Belle Crowell and Coburn Cook, Esq., appearing for Milo W. Bekins, et al. Thereupon the Court proceeded to hear the allegations and proofs in support of said petition and plan of composition and all matters and things pleaded and offered to controvert [182] the facts in said petition and in opposition to said plan of composition. The said petition and said matters and objections having been duly and fully heard

and argued and the hearing as to all parties having been concluded and the matter submitted to the Court by and on behalf of all parties, and the Court having considered all objections to said petition and said plan of composition and having filed herein a memorandum setting forth its conclusions with respect to the law and the facts, now makes and files its Findings of Fact and Conclusions of Law, in addition to those set forth in said Memorandum, as follows, to-wit:

FINDINGS OF FACT

I.

That petitioner, Merced Irrigation District, is an irrigation district duly formed, organized and existing under and by virtue of the provisions of the California Irrigation District Act of the State of California and said District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress and Approved August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States) and that the petition herein was filed pursuant to the provisions of said Act approved August 16, 1937.

II.

That petitioner is located wholly in the County of Merced, in the Southern Judicial District of California, Northern Division, and within the territorial jurisdiction of this court; that proof of due

publication and mailing of the notice to creditors heretofore [183] ordered by this Court has been duly filed; that such notice was first duly published as required by law and the order of this court, and that copies thereof were duly mailed to each of the creditors at their last known post office addresses at least sixty (60) days before the date fixed for hearing and as required by law and this court. That notice has been duly and regularly given in the time, form and manner as required by law and this court and that said petition was duly and regularly continued from time to time until Monday, the 21st day of November, 1938, at 10 o'clock A. M. of said day when said petition and all objections thereto came duly and regularly on for hearing and were heard.

III.

That the filing of the petition herein was authorized by proper resolution duly passed and adopted by the Board of Directors of petitioner prior to the filing thereof and that the fees required by the act hereinbefore mentioned were duly paid.

IV.

That petitioner, Merced Irrigation District, is insolvent and unable to meet its debts as they mature and desires to effect a plan of composition of its outstanding bond indebtedness. That petitioner did heretofore duly adopt such plan of composition

and that said plan of composition is set forth in the petition herein and is as follows, to-wit:

“That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or [184] before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three

Hundred Thirty-eight Thousand Eleven and 90/100ths ' Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation an agency of the United States of America, to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal [185] sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum.

“The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurte-

nant thereto which matured or became due July 1, 1933, and subsequently thereto."

That the plan of composition as offered by the petitioner herein is fair, equitable and for the best interests of its creditors and does not discriminate unfairly in favor of or against any creditor or creditors or class of creditors; that the plan of composition complies with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted and approved in writing by or on behalf of creditors of petitioner owning and holding more than ninety per cent (90%) of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims owned, held or controlled by petitioner; that all amounts to be paid by petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable and that the offer of the plan and its acceptance are in good faith and petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the terms thereof. [186]

V.

That prior to the filing of the petition herein the Reconstruction Finance Corporation, an agency of the United States, pursuant to contract with petitioner, purchased at the composition rate afore-

said, and ever since has owned, held and controlled and now owns, holds and controls, over 90% of the outstanding bond indebtedness of said District, to-wit, the Reconstruction Finance Corporation now owns, holds and controls approximately Fourteen Million Seven Hundred Two Thousand Dollars (\$14,702,000.00) principal of the outstanding Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) principal bond indebtedness of said District. That said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned, held and controlled by it. That there are no bonds owned, held or controlled by said petitioner district. That before the filing of the petition herein, said Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

VI.

That all of the allegations and averments set forth in said petition for confirmation of the plan of composition of bond indebtedness are true; and that all the denials of said petition set forth in the answers of objectors are untrue.

VII.

Respecting the plea of *res adjudicata* filed by objectors herein, the Court finds as follows:

That heretofore on the 18th day of April, 1935 petitioner herein filed in this Court a petition for

debt readjustment under [187] and pursuant to an Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States. That by said proceeding petitioner sought to confirm a plan of readjustment of its bond indebtedness under which the holders thereof would receive \$515.01 for each \$1000.00 bond and interest coupons due July 1, 1933 and subsequently thereto. That thereafter on the 4th day of March, 1936, judgment was entered by the above Court confirming said plan of readjustment. That thereafter an appeal to the United States Circuit Court of Appeals for the Ninth Circuit was taken from said judgment in said proceeding by certain of the objectors here represented. That before said appeal could be heard and before the record on appeal was prepared or printed, the United States Supreme Court on May 25th, 1936, in *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513, adjudged the congressional legislation pursuant to which said proceeding was commenced and prosecuted, to-wit, said Act of Congress approved May 24, 1934, Chapter 345 and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States to be unconstitutional. Thereafter on March 16, 1937, appellants in said proceeding filed a motion in the United States Circuit Court of Appeal for the Ninth Circuit praying that the printing of the record on appeal be dispensed with and that

the cause be advanced on the calendar and submitted and that an order be made forthwith reversing the decree with directions to dismiss the cause on the ground that jurisdiction of the District Court to render said decree depended altogether on the Act of Congress held to be unconstitutional by the United States Supreme Court as aforesaid, and that the District Court had no jurisdiction to render the decree appealed from. Thereafter on the 12th day of April, 1937, the United States Circuit Court of Appeals granted said motion [188] and pursuant thereto reversed the decree of the District Court and by mandate directed this court to dismiss the entire case (89 Fed. (2d) 1002) and thereafter petition for certiorari was denied by the Supreme Court of the United States (302 U. S. 709). The Court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court and that there was no judgment on the merits in said proceeding. This court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise.

VIII.

The court finds that on the 27th day of July, 1937, and prior to the enactment of Public No. 302 enacted by the Seventy-fifth Congress and approved

August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States), petitioner herein brought a proceeding in the Superior Court, County of Merced, State of California, under the terms of an act of the legislature of the State of California passed in 1937 and therein designated as "Irrigation District Refinancing Act" Statutes of California, 1937, Chapter 24. That in and by said proceeding petitioner sought the benefits of said act with respect to a plan of readjustment of its bond indebtedness under which outstanding bonds of consenting bondholders would be retired by payment of \$515.01 for each \$1000 principal amount and interest due July 1, 1933, and subsequently, and pursuant to which, if and when said plan should be confirmed by the court the bonds of non-consenting bondholders would be condemned and their value fixed as in said act provided. That thereafter a hearing upon said plan was held by the court as provided by Section 8 of said Irrigation District Refinancing Act and [189] certain of the objectors here represented objected to the plan and appeared in opposition thereto. That thereafter on March 10, 1938, Albert F. Ross, Judge of the Superior Court presiding, announced that he was prepared to enter an interlocutory judgment pursuant to Section 8 of said Irrigation District Refinancing Act and directing that Findings and such interlocutory judgment be prepared by petitioner pursuant to said Section 8. That no findings or interlocutory judgment have been prepared,

signed or entered and nothing further has been done in said proceeding. That said action pending in the State Court does not prejudice or bar the commencement, maintenance or prosecution of this proceeding.

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing facts, the Court finds and concludes that petitioner, Merced Irrigation District, is entitled to an interlocutory decree and judgment approving and confirming said plan of composition as proposed and presented and contained in said petition and that said plan of composition and said decree of confirmation shall become and be binding upon all creditors affected by the plan if within the time prescribed in said decree or such additional time as the judge or the law may allow, the money to be delivered to the bondholders under the terms of the plan shall have been deposited with the court or such depository as the court may appoint or shall otherwise be made available for the bondholders affected by the plan. That thereafter upon compliance with the interlocutory decree petitioner shall be entitled to a final decree as provided by law.

Dated: February 21st, 1939.

PAUL J. McCORMICK,

Judge of the United States District Court.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Feb. 21, 1939. [190]

In the District Court of the United States for the
Southern District of California, Northern Di-
vision.

No. 4818 In Bankruptcy

In Proceedings for Confirmation of a Plan of Com-
position of Bond Indebtedness

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

INTERLOCUTORY DECREE

The petition of Merced Irrigation District for confirmation of a plan of composition of its bond indebtedness heretofore came on duly and regularly for hearing before this Court, said Irrigation District appearing by its counsel, C. Ray Robinson, Hugh K. Landram and Stephen W. Downey, and objectors appearing by counsel as follows: Messrs. Freidenrich & Selig and Kirkbride & Wilson, appearing for Claire S. Strauss; Messrs. Brobeck, Phleger & Harrison, appearing for Florence Moore, et al; Messrs. tum Suden and tum Suden appearing for Minnie Rigby and Richard tum Suden as executors, etc., of the estate of Wm. A. Lieber; Hugh K. McKevitt, Esq., appearing for Pacific National Bank of San Francisco; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; [191] Clark, Nichols & Eltse appearing for Mary E. Morris; Chase, Barnes & Chase, Esqs.,

appearing for R. D. Crowell and Belle Crowell and Coburn Cook, Esq., appearing for Milo W. Bekins, et al. Thereupon the court proceeded to hear the allegations and proofs in support of said petition and plan of composition and all matters and things pleaded and offered to controvert the facts in said petition and in opposition to said plan of composition. The said petition and said matters and objections having been duly and fully heard and argued and the hearing as to all parties having been concluded and the matter duly submitted to the Court by and on behalf of all parties, and the Court having considered all objections to said petition and said plan of composition, and having filed herein a memorandum setting forth its conclusions with respect to the facts and the law, and having made and entered its written Findings of Fact and Conclusions of Law in addition to those set forth in said Memorandum, and having found and now finding as follows, to-wit:

1. That petitioner, Merced Irrigation District, is an irrigation district duly formed, organized and existing under and by virtue of the provisions of the California Irrigation District Act of the State of California and said District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress and approved August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States) and that the petition herein was filed pursuant to

the provisions of said Act approved August 16, 1937.

2. That petitioner is located wholly in the County of Merced, in the Southern Judicial District of California, Northern Division, and within the territorial jurisdiction of this court; that proof of due publication and mailing of the notice to creditors heretofore ordered by this Court has been duly filed; that such notice was first duly published as required by law and the order of this Court, and that copies thereof were duly mailed to each of the [192] creditors at their last known postoffice addresses at least sixty (60) days before the date fixed for hearing and as required by law and this court. That notice has been duly and regularly given in time, form and manner as required by law and this Court and that said petition was duly and regularly continued from time to time until Monday the 21st day of November, 1938, at 10 o'clock A. M. of said day when said petition and all objections thereto came duly and regularly on for hearing and were heard.

3. That the filing of the petition herein was authorized by proper resolution duly passed and adopted by the Board of Directors of petitioner prior to the filing thereof and that the fees required by the act hereinbefore mentioned were duly paid.

4. That petitioner, Merced Irrigation District, is insolvent and unable to meet its debts as they

mature and desires to effect a plan of composition of its outstanding bond indebtedness. That petitioner did heretofore duly adopt such plan of composition and that said plan of composition is set forth in the petition herein and is as follows, to-wit:

“That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent [193] to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums

which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum. [194]

“The district, therefore, by such plan of composition proposes and offers the holders of its

outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto."

That the plan of composition as offered by the petitioner herein is fair, equitable and for the best interests of its creditors and does not discriminate unfairly in favor of or against any creditor or creditors or class of creditors; that the plan of composition complies with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted and approved in writing by or on behalf of creditors of petitioner owning and holding more than ninety per cent (90%) of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims owned, held or controlled by petitioner; that all amounts to be paid by petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable and that the offer of the plan and its acceptance are in good faith and petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the terms thereof.

5. That prior to the filing of the petition herein the Reconstruction Finance Corporation, an agency of the United States pursuant to contract with petitioner, purchased at the composition rate aforesaid, and ever since has owned, held and controlled and [195] now owns, holds and controls, over 90% of the outstanding bond indebtedness of said District, to-wit, the Reconstruction Finance Corporation now owns, holds and controls approximately Fourteen Million Seven Hundred Two Thousand Dollars (\$14,702,000.00) principal of the outstanding Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) principal bond indebtedness of said District. That said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned, held and controlled by it. That there are no bonds owned, held or controlled by said petitioner district. That before the filing of the petition herein, said Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

6. That all of the allegations and averments set forth in said petition for confirmation of the plan of composition of bond indebtedness are true; and that all the denials of said petition set forth in the answers of objectors are untrue.

7. That heretofore on the 18th day of April, 1935, petitioner herein filed in this Court a peti-

tion for debt readjustment under and pursuant to an Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States. That by said proceeding petitioner sought to confirm a plan of readjustment of its bond indebtedness under which the holders thereof would receive \$515.01 for each \$1000 bond and interest coupons due July 1, 1933 and subsequently thereto. That thereafter on the 4th day of March, 1936, judgment was entered [196] by the above Court confirming said plan of readjustment. That thereafter an appeal to the United States Circuit Court of Appeals for the Ninth Circuit was taken from said judgment in said proceeding by certain of the objectors here represented. That before said appeal could be heard and before the record on appeal was prepared or printed, the United States Supreme Court on May 25th, 1936, in *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513, adjudged the congressional legislation pursuant to which said proceeding was commenced and prosecuted, to-wit, said Act of Congress approved May 24, 1934, Chapter 345 and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States to be unconstitutional. Thereafter on March 16, 1937, appellants in said proceeding filed a motion in the United States Circuit Court of Appeals for the Ninth Circuit praying that the printing of the record on appeal be dispensed with and that the

cause be advanced on the calendar and submitted and that an order be made forthwith reversing the decree with directions to dismiss the cause on the ground that jurisdiction of the District Court to render said decree depended altogether on the Act of Congress held to be unconstitutional by the United States Supreme Court as aforesaid, and that the District Court had no jurisdiction to render the decree appealed from. Thereafter on the 12th day of April, 1937, the United States Circuit Court of Appeals granted said motion and pursuant thereto reversed the decree of the District Court and by mandate directed this court to dismiss the entire case (89 Fed. (2d) 1002) and thereafter petition for certiorari was denied by the Supreme Court of the United States (302 U. S. 709). The court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court [197] and that there was no judgment on the merits in said proceeding. The court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise.

8. The court finds that on the 27th day of July, 1937, and prior to the enactment of Public No. 302 enacted by the Seventy-fifth Congress and approved

August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States), petitioner herein brought a proceeding in the Superior Court, County of Merced, State of California, under the terms of an act of the legislature of the State of California passed in 1937 and therein designated as "Irrigation District Refinancing Act" Statutes of California, 1937, Chapter 24. That in and by said proceeding petitioner sought the benefits of said act with respect to a plan of readjustment of its bond indebtedness under which outstanding bonds of consenting bondholders would be retired by payment of \$515.01 for each \$1,000 principal amount and interest due July 1, 1933, and subsequently, and pursuant to which, if and when said plan should be confirmed by the court the bonds of non-consenting bondholders would be condemned and their value fixed as in said act provided. That thereafter a hearing upon said plan was held by the court as provided by Section 8 of said Irrigation District Refinancing Act and certain of the objectors here represented objected to the plan and appeared in opposition thereto. That thereafter on March 10, 1938, Albert F. Ross, Judge of the Superior Court presiding, announced that he was prepared to enter an interlocutory judgment pursuant to Section 8 of said Irrigation District Refinancing Act and directed that Findings and such interlocutory judgment be prepared [198] by petitioner pursuant to said Section 8. That no findings or interlocutory judgment have been prepared, signed or

entered and nothing further has been done in said proceeding. That said action pending in the State Court does not prejudice or bar the commencement, maintenance or prosecution of this proceeding.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the plan of composition as proposed and presented and contained in said petition be and the same is hereby confirmed and approved.

That all of the outstanding bonds and other indebtedness of petitioner that are affected by the plan as set forth, itemized and enumerated in the petition in this cause are of one and the same class, are payable without preference out of funds derived from the same source or sources, and are hereby allowed as obligations of the petitioner, whether presented or not, and that the several holders thereof are entitled to participate ratably in the distribution of the funds in accordance with the plan of composition and the decrees of this court as hereinafter provided.

That in order to provide the funds necessary to pay the incidental expenses and to pay for the outstanding bonds of the petitioner as contemplated by the plan of composition aforesaid and the orders of this court, petitioner is hereby authorized forthwith to duly issue and sell its refunding bonds to the Reconstruction Finance Corporation in amounts required to pay such incidental expenses and to pay the sum equal to 51.501 cents on the dollar of the principal amount of its outstanding bonds (not pur-

chased by the Reconstruction Finance Corporation) and to repay the Reconstruction Finance Corporation the money expended by it, to-wit: 51.501 cents on the dollar on the principal amount of [199] the outstanding bonds purchased by it. That the old bonds so purchased by the Reconstruction Finance Corporation will thereupon be cancelled and returned to petitioner and that each and all of said refunding bonds so issued and sold by the petitioner to the Reconstruction Finance Corporation, as provided herein, are hereby declared to be valid obligations of such district and shall not at any time be affected by the plan of composition, or these proceedings.

That during the pendency of these proceedings the Reconstruction Finance Corporation is authorized to purchase from the holders thereof any of the outstanding bonds of petitioner upon the following terms and conditions, to-wit: The Reconstruction Finance Corporation to pay the sum of 51.501 cents on each dollar of the principal amount of the outstanding bonds, paying nothing on interest, and deducting from said amounts for missing coupons as provided in this decree for payment of the outstanding bonds by the disbursing agent. That when purchased, as provided in this paragraph, the old bonds shall be delivered to the Reconstruction Finance Corporation and held by it as security for the funds furnished by it for such purpose, with interest thereon at 4% per annum, until such time as it receives from petitioner its refunding bonds

for such disbursements and interest, or petitioner may pay such interest and deliver bonds for the principal.

That the petitioner within sixty (60) days from the time this decree becomes final, or such additional time as the judge may allow, set aside and deposit in trust with the Treasurer of Merced Irrigation District, who is hereby appointed as disbursing agent of this court, the sum necessary to pay the holders of its outstanding bonds, other [200] than bonds which shall have been purchased by the Reconstruction Finance Corporation as herein provided 51.501 cents on the dollar of the unpaid principal amount thereof, excluding all interest due or to become due and which matured July 1, 1933, and subsequently thereto, and the holders of said bonds be and they are hereby required to deposit said bonds with all unpaid interest coupons attached with the disbursing agent before payment is made as herein provided; that if any bonds are so deposited with any unpaid interest coupons due on or before July 1, 1934, missing, the disbursing agent shall make a deduction from the amount to be paid therefor, a sum equal to 44.78 cents for each dollar of the face amount of such missing coupons, and if any bond be presented with any unpaid interest coupons maturing after July 1, 1934, missing, deductions shall be made from the amount to be paid therefor equal to the full face value of the missing coupons. In case any deductions are made on ac-

count of missing coupons, and such coupons are afterwards deposited within the time prescribed by this decree, there shall be paid to the holder of such missing coupons the amount deducted therefor; that when payments shall have been made for the old bonds and coupons as provided in the plan of composition and this decree, the disbursing agent shall mark said bonds and coupons so paid "Cancelled" and return them to the petitioner.

That in the event any of the old bonds and interest coupons are not surrendered to the disbursing agent within sixty (60) days after receipt by such agent of the money with which to retire the same, or such additional time as the judge may allow, then the proportionate sum to which the holders thereof may be entitled under the plan of composition, and terms of this decree, shall be paid by the disbursing agent to the clerk of this court as Registrar, and thereafter paid by him to the holders of such bonds in [201] accordance with the provisions of this decree and such further decrees of this court as made in reference to the payment of such bonds.

That the clerk of this court shall cause to be published in the Merced Sun-Star and The Wall Street Journal, Pacific Coast Edition, newspapers published in Merced and San Francisco, respectively, for two successive issues notice to the holders of the outstanding bonds of the petitioner directing every holder thereof to deposit any and all bonds of the petitioner with the disbursing agent within the sixty

(60) day period above provided or thereafter with the clerk of this court for payment in accordance with this decree or be forever barred from claiming or asserting as against petitioner or any individually owned property located within petitioner district or the owners thereof any claim or lien arising out of said bonds; provided, however, that nothing contained herein shall preclude the Reconstruction Finance Corporation from asserting its rights and claims under the old bonds so purchased by it to the extent and amount so expended in acquiring the same, with interest thereon at the rate of 4% per annum, until petitioner shall have delivered to the Reconstruction Finance Corporation its refunding bonds in form satisfactory to said Reconstruction Finance Corporation in the aggregate principal amount equal to the money so expended in acquiring such old bonds, with interest.

That after the expiration of sixty (60) days from the date of receipt of the funds to carry out the terms of the plan of composition and retire the outstanding indebtedness as provided in such plan, the disbursing agent shall make full and complete report to this court for confirmation, including an itemized statement of all receipts and disbursements together with a list of old bonds outstanding at the time of such report, showing serial number [202] of and amount of each outstanding unpaid bond.

That any and all holders of the outstanding indebtedness of petitioner district be and are hereby

enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien, by legal proceedings or otherwise, which they may have against petitioner or against any of the lands situated within petitioner district and held by individuals.

Dated February 21st, 1939 at 1:05 P. M.

PAUL J. McCORMICK,

Judge of the United States

District Court.

[Endorsed]: Interlocutory Decree. Filed Feb. 21,
1939. [203]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To Messrs Freidenrich & Selig; Kirkbride & Wilson; Brobeck, Phleger & Harrison; tum Suden and tum Suden; Hugh K. McKevitt; Charles L. Childers; Clark, Nichols & Eltse; Chase, Barnes & Chase, and W. Coburn Cook, Attorneys for Respondents:

You, And Each of You, Will Please Take Notice that the above entitled court duly made and entered its Findings of Fact and Conclusions of Law and its Interlocutory Decree in the above proceeding on the 21st day of February, 1939.

Dated: February 28, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND &
SEYMOUR,
STEPHEN W. DOWNEY,
Attorneys for Merced Irriga-
tion District.

[Endorsed]: Notice of Entry of Judgment. Filed
Mar. 3, 1939. (Affidavit of service attached.) [204]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Sacramento—ss.

A. M. Merz, being first duly sworn, deposes and
says:

That affiant is a citizen of the United States and
over the age of eighteen (18) years and not a party
to the above entitled cause; that affiant's business
address is 500 Capital National Bank Building, Sev-
enth and J Streets, City of Sacramento, County of
Sacramento, State of California, where the mailing
hereinafter set forth occurred; that on February
28th, 1939, affiant served the Notice of Entry of
Judgment in the above-entitled matter upon: Hugh
K. McKevitt, Esq., Messrs tum Suden & tum Suden,

Messrs Brobeck, Phleger & Harrison, Messrs Chase, Barnes & Chase, Messrs. Clark, Nichols & Eltse, Messrs. Kirkbride & Wilson, Charles L. Childers, Esq., Messrs Freidenrich & Selig, and Coburn Cook, Esq., attorneys for objectors in the above entitled cause, by depositing copies thereof in the United States Post Office in the City of Sacramento, County of Sacramento, State of California, in sealed envelopes, with postage fully prepaid thereon, addressed as follows: [205]

Hugh K. McKeivitt, Esq.,
Russ Building,
San Francisco, California.

Messrs. tum Suden & tum Suden,
Attorneys at Law,
605 Market Street,
San Francisco, California.

Messrs. Brobeck, Phleger & Harrison,
Crocker Building,
San Francisco, California.

Messrs. Chase, Barnes & Chase,
Attorneys at Law,
Title Insurance Building,
433 South Spring Street,
Los Angeles, California.

Messrs. Clark, Nichols & Eltse,
Attorneys at Law,
American Trust Company Bldg.,
Berkeley, California.

Messrs. Kirkbride & Wilson,
Attorneys at Law,
307 B Street,
San Mateo, California.

Charles L. Childers, Esq.,
Attorney at Law,
207 Bank of America Bldg.,
El Centro, California.

Messrs. Freidenrich & Selig,
Attorneys at Law,
Stock Exchange Bldg.,
San Francisco, Calif.

Coburn Cook, Esq.,
Attorney at Law,
Turlock, California.

That Messrs. Downey, Brand & Seymour, attorneys for the party on whose behalf said service was made, have their offices in the City of Sacramento, County of Sacramento, State of California; that the said persons upon whom service was made have their offices at the addresses hereinabove set after said names, said addresses being the last given by said persons on any document which they filed in the cause and served upon the parties on whose behalf service was made.

That there is a daily, regular communication by mail between Sacramento, California, and the places so addressed as aforesaid.

A. M. MERZ. [206]

Subscribed and sworn to before me this 1st day
of March, 1939.

[Notarial Seal]

VERLIE C. BRANSTETTER,
Notary Public in and for the
County of Sacramento, State
of California.

[Endorsed]: Filed Mar. 3, 1939. [207]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL

To: Merced Irrigation District, Petitioner in the
above entitled proceedings, and to Messrs.
Downey, Brand and Seymour, attorneys for
said Petitioner:

You and Each of You Will Please Take Notice
that Claire S. Strauss; Florence Moore, et al;
Minnie Rigby and Richard tum Suden, as executors
of the estate of Wm. A. Lieber; Pacific National
Bank of San Francisco; West Coast Life Insurance
Company; Milo W. Bekins, et al; and R. D. Crowell
and Belle Crowell, respondents and objectors to the
petition of petitioner above named, will on the 20th
day of March, 1939, at 10 o'clock A. M., in the court-
room of the above entitled court, in the Federal

Building, at Los Angeles, California, Honorable Paul J. McCormick, Judge, presiding, move the above entitled court for an order setting aside the interlocutory judgment and decree herein and granting a new trial in the above entitled cause, on the grounds that:

1. The evidence is insufficient to support the judgment and decree;
2. The judgment and decree is against the law.
3. Respondents and objectors have discovered new evidence since the decision in the cause above described, which with reasonable diligence they could not have discovered and produced at the trial, material to the issues herein, all as set forth in the affidavits of Lucius F. Chase, Walter Stange and John V. Murphy, marked, [208] respectively, Exhibits "A", "B" and "C", attached to written motion for new trial filed herein.

Said motion will be based on the minutes of the court, and upon all the testimony, evidence, records, papers and files in said proceeding, the affidavits appended to said motion, and the memorandum in support of motion for new trial appended to said motion.

Dated: March 3, 1939.

W. COBURN COOK

Per L. F. C.

CHARLES CHILDERS

Per L. F. C.

PETER TUM SUDEN

Per L. F. C.

DAVID FREIDENRICH

By LUCIUS F. CHASE

BROBECK, PHLEGER &
HARRISON,

By LUCIUS F. CHASE

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for respondents
and objectors above named.

[Endorsed]: Notice of Motion for New Trial.
Filed Mar. 3, 1939. [209]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Now come Claire S. Strauss; Florence Moore, et al; Minnie Rigby and Richard tum Suden, as executors of the estate of Wm. A. Lieber; Pacific National Bank of San Francisco; West Coast Life Insurance Company; Milo W. Bekins, et al; and R. D. Crowell and Belle Crowell, respondents and

objectors to the petition of petitioner above named, and move this court for an order setting aside the interlocutory judgment and decree herein and granting a new trial in the above entitled cause for the following reasons, to-wit:

1. The evidence is insufficient to support the judgment and decree;

2. The judgment and decree is against the law;

3. Respondents and objectors have discovered new evidence since the decision in the cause above described, which with reasonable diligence they could not have discovered and produced at the trial, material to the issues herein, all as set forth in the affidavits of Lucius F. Chase, Walter Stange and John V. Murphy, marked, respectively, Exhibits "A", "B" and "C", attached hereto and made a part hereof.

This motion is based upon the minutes of the court and upon all the testimony, evidence, records, papers and files in said proceeding, the affidavits appended hereto, and the memorandum in support [210] of motion for new trial appended to this motion.

Dated: March 3, 1939.

W. COBURN COOK,

Per L. F. C.

CHARLES CHILDERS,

Per L. F. C.

PETER TUM SUDEN,

Per L. F. C.

DAVID FREIDENRICH,

Per L. F. C.

BROBECK, PHLEGER &

HARRISON,

By LUCIUS F. CHASE

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE

Attorneys for respondents
and objectors above named.

[Endorsed]: Motion for New Trial. Filed Mar. 3,
1939. [211]

EXHIBIT A

[Title of District Court and Cause.]

AFFIDAVIT ON MOTION FOR NEW TRIAL

State of California,

County of Los Angeles—ss.

Lucius F. Chase, being duly sworn, deposes and
says:

That he is an attorney of record for respondents and objectors Belle Crowell and R. D. Crowell in the above entitled matter.

That among the issues involved in the above entitled case is the good faith of the petitioner herein, its solvency, and its plan of competition proposed by said petitioner.

That prior to the trial herein, affiant moved for and obtained an order for inspection of the records of the Merced Irrigation District, but at the request of counsel for said District this was not obtained until Saturday, November 19, 1938, just before the trial commenced on November 21, 1938; that at that time, affiant had no suspicion that the books and records of Merced Irrigation District were in anywise untrue or inaccurate, and that affiant and all other counsel for respondents, in the above entitled Court, assumed such records to be true and accurate, as petitioner is a public agency of the State of California.

That at the time of the inspection of the documents by affiant on Saturday, November 19, 1938, affiant discovered for the first time that petitioner made financial statements to Reconstruction Finance Corporation, copies of which are in [212] evidence, marked Exhibits "J" and "K", inconsistent with statements showing a liability of \$16,191,000.00, but aside from that fact, affiant was not advised or had any reason to believe that other records of petitioner were inaccurate.

That during the trial of the cause and on Wednesday, November 23, 1938, affiant, for the first time, discovered that in setting up the liabilities in the financial statement of the District herein, Exhibit 26, payments made to the Reconstruction Finance Corporation on account of interest, which, according to the opening statement of Mr. Downey, were by agreement credited on matured bond interest on bonds held by Reconstruction Finance Corporation, had not been applied as a credit on the matured bond interest liability, shown on said statement, Exhibit 26; affiant further discovered, at that time, that an additional item of credit in the amount of \$168,582.26 paid depositing bondholders on account of interest, had not been credited on the matured interest liability of the District, and that the amount of interest on matured obligations was overstated by the District in the amount of \$129,100.00, and such facts were brought out by the affiant through examination of the witness E. E. Neel. That affiant was not aware that there were any other or further discrepancies in said financial statement.

That Exhibit 26 was somewhat confusing to affiant, and after the trial and decision and in February, 1939, affiant submitted the same to John V. Murphy, a public accountant practicing in the City of Los Angeles, California, with offices at 512 Title Insurance Building, for further analysis, affiant was then advised, since the decision in this case, by

Mr. Murphy that, in the light of the admitted bond liability of \$16,191,000.00, there was a false overstatement of \$387,000.00 on the statement, Exhibit 26, as appears by the affidavit of the said John V. Murphy, on file herein. [213]

That thereafter, affiant employed Walter Stange, supervising accountant of the firm of Lybrand, Ross Bros. & Montgomery, to make a further analysis of Exhibit 26, and all other balance sheet exhibits, which analysis was made by Mr. Stange on March 2 and March 3, 1939, and for the first time affiant learned that there was an apparent omission of an asset from Exhibit 26 of approximately \$340,000.00, shown on previous statements of the District, Exhibits "J" and "K", being the current assessments receivable of the District, and was also advised by Mr. Stange that an examination of all of the accounts and evidence indicated the possibility that other assets of the District, in substantial amounts, may have been omitted from the said Exhibit 26.

That affiant, on examining the exhibits on Mar. 2, 1939, could find no evidence in the record of any independent audit for the petitioner. That if a new trial is granted, affiant proposes to make a careful investigation of the matters hereinabove set forth. That affiant could not, with due diligence, have ascertained the matters set forth in the affidavits of John V. Murphy and Walter Stange prior to or during the trial of the above entitled cause.

LUCIUS F. CHASE.

Subscribed and sworn to before me this 3rd day of March, 1939.

MARGUERITE THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Affidavit on Motion for a New Trial.
(Exhibit A.) Filed Mar. 3, 1939. [214]

EXHIBIT B

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
NEW TRIAL

State of California

County of Los Angeles—ss.

N. Walter Stange, being duly sworn, deposes and says:

That he is a Certified Public Accountant under Certificate No. 1259-E, State of California, and that he has been employed by Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, Los Angeles, California, for the past eight years and at the present time holds the position of supervising accountant with said firm.

That he has examined photostatic copies of Exhibits No. 25 and 26 and Exhibits lettered J, K, Z, E, D, X, in evidence in the above entitled cause on file in the offices of the Clerk of the District Court

of the United States for the Southern District of California in the Federal Building, Los Angeles, California, and has also examined pages 174 and 181 to 221, inclusive, and 284 to 339, inclusive, of a copy of transcript of testimony given at the trial of the above entitled cause at Fresno, California, said copy of transcript of testimony having been furnished by Mr. Lucius F. Chase, Attorney.

That it appears therefrom that Exhibit 26 is a balance sheet introduced by Merced Irrigation District purporting to set forth the true financial condition of the Merced Irrigation District as at November 1, 1938, prepared in accordance with the assumption that the district's indebtedness at that date included outstanding bonds in the amount of \$16,191,000.00, together with accrued interest [215] thereon but included no additional indebtedness to the Reconstruction Finance Corporation.

That in the opinion of the affiant, based upon the review of exhibits and transcript of testimony described above, and subject to the foregoing assumption as to the indebtedness of the District, the balance sheet of Merced Irrigation District as at November 1, 1938, appears to contain several items of overstatement of liabilities and appears not to contain several items of assets. These seeming inaccuracies are as follows:

Item 1: Liability for bonds outstanding is stated at \$387,000.00 for unpaid matured bonds and \$16,191,000.00 for capital liabilities, an aggregate liabil-

ity of \$16,578,000.00, whereas testimony indicates that total bonded indebtedness is \$16,191,000.00. Exhibit 26 therefore appears to overstate the liability for bonds by \$387,000.00.

Item 2: The liability for unpaid matured bond interest coupons is stated at \$5,076,185.00 which testimony indicates includes all coupons which have matured during the period July 1, 1933, to November 1, 1938, but includes no credit against this accrual for interest payments to the Reconstruction Finance Corporation during the period from October 4, 1935, to June 30, 1938, in the amount of \$824,684.59. It appears that the latter amount should be offset against the former in the balance sheet at November 1, 1938, in computing the accrued interest liability at that date.

Similarly, it appears that deduction of \$168,027.31 from interest liability should be made for the amount of interest paid to various depositaries for account of depositing bondholders for the periods from the date bonds were deposited to date of payment therefor by the Reconstruction Finance Corporation.

The statement at November 1, 1938 (Exhibit 26) therefore appears to *overtake* the liability for interest coupons by \$992,711.90. [216]

Item 3: Liability for accrued interest on registered bonds and coupons is stated at \$1,004,887.54 according to testimony and includes in the basis for computation all bond coupons matured subse-

quent to January 1, 1933, and prior to November 1, 1938, held by the Reconstruction Finance Corporation. From the point of view of said statement (Exhibit 26), it appears that the interest paid the Reconstruction Finance Corporation in the amount of \$824,684.59 should be deducted from the basis of computation to determine the interest accrual at November 1, 1938. The effect of this adjustment (assuming that the computation thereof reflected in Exhibit Z is correct) amounts to \$129,100.00. It appears therefore that interest liability is overstated in Exhibit 26 by the amount of this adjustment.

Item 4: The statement includes as a liability an item captioned "Balance 1938 Budget Operations (Est.) \$80,000.00". This appears to represent budget appropriation for expenditures to be made subsequent to November 1, 1938, not actual liabilities at that date. If this inference is true, it appears that liabilities are overstated in Exhibit 26 by the amount of this item.

Item 5: Comparison between balance sheets of the Merced Irrigation District as of December 31, 1937 (Exhibit J) and as of June 30, 1938 (Exhibit K), furnished the Reconstruction Finance Corporation, with the balance sheet as at November 1, 1938, (Exhibit 26) indicates that whereas the statements to the Reconstruction Finance Corporation include as assets the amount of unpaid tax assessments receivable from landowners in the amounts

of \$416,879.75 and \$218,310.13, as at December 31, 1937 and June 30, 1938, respectively, the balance sheet at November 1, 1938, seemingly omits any similar item from the list of assets. Exhibit 25 shows the amount of \$296,096.00 unpaid taxes receivable as at November 1, 1938 (without indicating how much, if any, from the 1938-1939 levy may properly be included as a receivable as an asset at November 1, 1938), [217] and evidence indicates a levy of approximately \$340,000.00 for the fiscal year 1938-1939). If the inference is correct that these items have been omitted from the balance sheet at November 1, 1938, it appears that total assets stated therein have been understated by the entire amount of taxes receivable.

Item 6: Comparison of Exhibits J and K with Exhibit 26 indicates that the District has an inventory (presumably of current supplies) which would ordinarily be included in a list of its assets and is so treated in the balance sheets as at December 31, 1937, and as at June 30, 1938, furnished to the Reconstruction Finance Corporation. It does not appear that the item of inventory has been included in the balance sheet at November 1, 1938, which, if the inference is true, indicates an understatement of assets by the amount of the inventory.

Attached hereto are photostatic copies of Exhibits 25, 26, part of Exhibits J and K, and Exhibit Z.

Further affiant sayeth not.

WALTER STANGE.

Subscribed and sworn to before me this 3rd day of March, 1939.

[Seal] MARGUERITE THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Affidavit in Support of Motion for New Trial (Exhibit B). Filed Mar. 3, 1939. [218]

EXHIBIT C

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN V. MURPHY

State of California.

County of Los Angeles—ss.

John V. Murphy, being first duly sworn, deposes and says:

That he is a public accountant practicing in the City of Los Angeles, admitted to practice before the Treasury Department of the United States and the Corporation Commissioner of the State of California;

That from 1920 to 1924 he was a qualified accountant in Brisbane, Australia, and since said date has practiced his profession in the cities of San Francisco and Los Angeles, California;

That during the period from May, 1926 to December, 1927, he was a senior accountant employed by Lybrand, Ross Bros. & Montgomery, and that subsequently he was employed as senior accountant

for the firm of Haskins & Sells; that for the past ten (10) years he has practiced his profession as public accountant in the City of Los Angeles;

That at the request of Mr. Lucius F. Chase, during the months of February and March, 1939, he examined photostatic copies of Exhibits Nos. 25, 26, "J", "K" and "Z" in evidence herein, and relevant portions of copies of transcript of testimony furnished by the said Lucius F. Chase; that from such examination it is the opinion of affiant that said Exhibit 26 falsely over-states the principal bond obligation of the said Merced Irrigation District [220] by the sum of Three Hundred Eighty-Seven Thousand (\$387,000.00) Dollars;

That affiant has examined the affidavit of Walter Stange, attached hereto, and in general, concurs in the conclusions of Mr. Stange.

JOHN V. MURPHY.

Subscribed and sworn to before me, this 3rd day of March, 1939.

[Seal] MARGUERITE THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Affidavit of John V. Murphy (Exhibit C). Filed Mar. 3, 1939. [221]

[Title of District Court and Cause.]

AFFIDAVIT

State of California

County of Sacramento—ss.

Charles Lumbard, being first duly sworn, on his oath deposes and says:

That he is a Certified Public Accountant under Certificate No. 168 issued by State Board of Accountancy; that he is also a member of the American Institute of Accountants and of the California State Society of Certified Public Accountants; that for the last few years he has been specializing in governmental accounting, including state, city and county and irrigation and reclamation district accounting; that he has audited the County of Sacramento on two occasions, to-wit: in 1919 and 1934; that he has audited the County of Placer with William Dolge, Certified Public Accountant of San Francisco; that he has audited Plumas County with William Dolge, Certified Public Accountant of San Francisco, and that at the present time he is auditing in Sutter County the offices of Auditor, Tax Collector-Treasurer, Board of Supervisors and that said audit in Sutter County also covers seven reclamation districts and two levee districts: that he has also audited the following Irrigation Districts, to-wit: Fair Oaks Irrigation [222] District, Carmichael Irrigation District, Oroville-Wyandotte Irrigation District (special investigation), Thermo-

lito Irrigation District (special investigation) and Citrus Heights Irrigation District, at which latter District he is now the auditor; that recently he was appointed Referee by the District Court of Appeal, Third Appellate District, to report on the finance of Reclamation District No. 108 in *Mary Morris v. California Gibson*, as Treasurer of Colusa County, (decided January 26, 1939, reported in 96 Cal. App. Decisions, 347).

That affiant has examined copy of Exhibit 26 introduced in evidence in the above case which purports to be a balance sheet of the Merced Irrigation District as of November 1, 1938; that affiant assumes from said balance sheet that the outstanding principal bond issue of said District is \$16,191,000.00, of which sum \$387,000.00 principal amount is matured and unpaid; that upon said assumption affiant is of the opinion that said balance sheet does not overstate the bond liabilities of said District. In the opinion of affiant, the \$387,000.00 entry under the heading of "Unpaid Matured Bonds" is an internal entry properly made to show a true picture of the financial condition of said District. Affiant is further of the opinion that the accounting procedure followed in said Exhibit 26 follows exactly the procedure as set forth in the system of accounting for irrigation districts operating under the California Irrigation District Act, which was adopted by the California Irrigation District Association in November, 1928, and which is primarily designed to

show the status of the various funds of an irrigation district. Under said system the bond account under "Capital Liabilities" in said statement should not be reduced until the bonds are actually redeemed, and matured [223] bond obligations should be shown under "Current Liabilities" and charged against the accounting item "Bond Fund Surplus" as was done in Exhibit 26, to-wit: The item "Unpd. Matured Bonds" in the amount of \$387,000.00 appearing in "Current Liabilities" (Exhibit 26) is voided by being included in the deficit item shown under "Capital Liabilities" "Bond Fund Surplus (Old)" in the amount of \$6,466,962.75 (red). Said accounting procedure, including solely the items discussed herein would be illustrated as follows:

Current Liabilities

Unpd. Matured Bonds.....	\$387,000	\$387,000
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Capital Liabilities

Bond Fund Surplus (Old).....	-387,000	-387,000
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Bond Accounts	\$16,191,000	16,191,000
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\$16,191,000

\$16,191,000

(-indicates deduction)

In reading a financial statement of the type exemplified in Exhibit 26 the balance sheet must be looked at as a whole and in light of the system followed in the manual governing the system of accounting for irrigation districts above referred to and as so read, in the opinion of affiant, the bond items are correctly set forth.

CHARLES LUMBARD.

Subscribed and sworn to before me this 10th day of March, 1939.

[Notarial Seal] VERLIE C. BRANSTETTER,
Notary Public in and for the County of Sacramento,
State of California. [224]

[Title of District Court and Cause.]

AFFIDAVIT

State of California
County of Sacramento—ss.

H. P. Sargent, being first duly sworn, deposes and says:

That he is Secretary of Merced Irrigation District and has been such Secretary since 1924. That as such Secretary he is in charge of the books, records and accounts of said District, and that E. E. Neel, Auditor of said District, works under his direction.

That affiant is custodian of, and entirely familiar with, all of said records, books and accounts, and that they are true and accurate to the best of affiant's knowledge and belief. That no asset of said District has ever been suppressed in this proceeding and no liability has ever been overstated, and all assets and liabilities have been fully set forth in the evidence and exhibits of this proceeding. That since 1930 when said District first went into

default, the Bondholders Protective Committee and the bondholders protesting the plan of refinancing have been consistently and uniformly furnished and supplied with information requested by them concerning the District finances and other matters and, when requested, they have been given access to the [225] records. That before and during the trial of the first bankruptcy action in Fresno in 1936, and before and during the trial of the proceeding in the State Court at Merced under the State Refinancing Act, and before and during the trial of this proceeding in Fresno in November, 1938, affiant caused all relevant data respecting finances and other matters to be assembled for convenient use in said trials and supplied protestants and their counsel with all information they requested. That affiant caused exhibits to be made which would set up the financial statement of the District from every point of view, and for at least two (2) months preceding the trial of this proceeding all clerical, accounting and secretarial employees of said District devoted the major part of their time and attention to assembling data for the convenient use of Court and counsel herein. That on November 15, 1938, in the course of an argument in Los Angeles on motion to quash service of subpoena on F. J. Keenan, Mr. Lucius F. Chase asked for and with consent of counsel for the District was granted permission to examine the files relating to the District's transactions with the Reconstruction Finance Corporation at Merced. That

said date of examination was fixed for November 19, 1938, and on that date Mr. Chase and Mr. Cook examined said files at Merced and were given all information which they requested.

Respecting Item No. 1 referred to in affidavit of N. Walter Stange on motion for new trial herein, affiant avers that consistently throughout this proceeding and at each and every step therein, the District has asserted that it has an outstanding principal bond issue of \$16,190,000.00 and that it has never at any time, in this proceeding or in any of the testimony or exhibits herein or elsewhere, asserted that it had a liability on outstanding principal bonds of \$16,578,000.00. That the District has [226] never claimed in this proceeding or at any other time that it has a bond liability of \$387,000.00 in excess of \$16,191,000.00.

That Items Nos. 2 and 3 referred to in said affidavit of N. Walter Stange were not intended to be included in Exhibit No. 26 and were not properly a part of Exhibit No. 26, in the opinion of affiant, but affiant avers that all the facts and circumstances in connection with said items appear in the testimony and record of this case, including the opening statement of Mr. Downey, counsel for the District, the testimony of E. E. Neel and in Petitioner's Exhibit No. 22 and Respondents' Exhibit "Z".

Respecting Item No. 4 referred to in the affidavit of N. Walter Stange, affiant avers that said item

represents the balance of the expenditures for 1938 against the tax receipts, tax certificates and power revenue for said year. Affiant further avers that the expenditures for 1938 against said revenues for 1938 are a proper item for inclusion in said Exhibit No. 26.

With respect to Item No. 5 referred to in the affidavit of N. Walter Stange, affiant avers that the item therein referred to as having been omitted from the balance sheet of November 1, 1938, to-wit, a tax levy of approximately \$340,000.00 for the fiscal year 1938-39, was properly omitted from said balance sheet. Affiant further avers that the facts concerning said levy are fully set forth in the record herein. In this connection affiant avers that the 1938-39 levy of \$337,369.00 was set in September 1938 by the Directors of the District under Section 11 of the California Districts Securities Commission Act, subject to the approval of said Commission, and represented a portion of the sum necessary for operating expenses during the year 1939. That neither said levy nor the [227] operating expenses for 1939 are included in Exhibit No. 26 and neither of said items was properly a part thereof.

Respecting Item No. 6 referred to in said affidavit, affiant avers that the list of assets set forth in the inventory therein referred to is included in the item set forth in Exhibit No. 26 under the caption "General Equipment—Capital Assets—\$98,204.49", and

that all items included in said inventory have been included in said balance sheet.

Affiant denies there was any inconsistency between the financial statements made to the Reconstruction Finance Corporation and any other financial statements made by the District, and avers that all facts with respect to said alleged inconsistency have been fully brought out in the evidence and exhibits in this proceeding; avers that the Merced Irrigation District has been audited annually by an independent auditor and that for several years last past said audit has been made by Harry Wiet & Co., Merced, California.

H. P. SARGENT.

Subscribed and sworn to before me this 10th day of March, 1939.

[Notarial Seal] VERLIE C. BRANSTETTER,
Notary Public in and for the County of Sacramento,
State of California. [228]

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
County of Sacramento—ss.

E. E. Neel, being first duly sworn, upon his oath deposes and says:

That he is now and has been for many years last

past, Auditor for Merced Irrigation District; that the books and financial records of said District, according to the best of his knowledge and belief, have been kept honestly, accurately and truly; that during the course of the trial of the above case at Fresno, California, affiant met frequently with Mr. Chase and other counsel for protestant bondholders outside of the courtroom and gave them all information requested, fully, completely and accurately, according to the best of his knowledge and belief; that in that connection he worked with counsel of protesting bondholders in preparing exhibits and other testimony and disclosed to them fully and frankly all matters concerning the District finances with respect to which they interrogated him.

With respect to Item No. 1 referred to in the affidavit of N. Walter Stange on motion for new trial, affiant avers that Exhibit No. 26 shows the true status of the various funds of the District as of November 1, 1938; that the liabilities of the [229] District, as shown, were outstanding bonds in amount of \$16,191,000.00 (as testified to throughout the trial); that the General Fund liabilities were \$102,549.93 and that there was a liability of \$5,076,-185.00 represented by matured bond interest coupons and a further liability of \$1,004,887.54, being interest on registered coupons and bonds, making a grand total of \$22,374,622.47 liabilities of the District, this amount being in excess of the assets (Exhibit No. 26) by \$1,895,721.21. If reference is made

to Respondents' Exhibit Z, it will be found that the same result is reached after adjustment made for claimed credits of \$1,122,366.00.

Respecting Items Nos. 2 and 3 referred to in said affidavit of N. Walter Stange, affiant avers that all facts with respect thereto were testified to by him at the trial and are shown in Exhibit "Z", and that in the opinion of affiant they were not properly a part of Exhibit No. 26.

Referring to Item No. 4 in the affidavit of N. Walter Stange, affiant avers that the cash balance on hand in the general fund November 1, 1938, as shown by Exhibit No. 26, is the sum of \$527,243.36, which sum includes money received from the 1937-38 tax assessment and other revenues which are placed in the general fund for the purpose of providing for the budget requirements for the calendar year 1938; that on November 1, 1938 there remained two months of District operations, estimated at \$80,000.00, to be paid out of said funds so provided; the \$80,000.00 estimated cost for the months of November and December, 1938 represented an actual obligation or liability of the District against the money which had been collected and placed in the general fund for the meeting of that particular requirement and is a proper charge against the fund; similarly, it would be improper, in affiant's opinion, to [230] claim all or any part of an assessment levied for a particular obligation as an asset without setting up or showing the obligation for which the assessment was levied.

That respecting Item No. 5 referred to in the affidavit of N. Walter Stange, affiant avers that the unpaid tax assessments of \$416,879.75 appearing in a report to the Reconstruction Finance Corporation as of December 31, 1937, were reduced to \$218,310.13 on June 30, 1938 by credits for lands deeded, partial payment credits, and collection of taxes; that the unpaid assessments on June 30, 1938 in the amount of \$218,310.13 were further reduced by credits from lands deeded, partial payment credits and tax collections during the period July 1 to November 1, 1938, to \$206,096.93, shown by Exhibit No. 25; that the amount of \$206,096.93 represents all uncollected assessments appearing on the District tax rolls on November 1, 1938 and is therefore shown on Exhibit No. 26 as a current asset; that the 1938-39 levy of \$337,369.00 was set in September, 1938; that the first installment thereof was not payable until the last Monday in December, 1938, and the purpose of said levy was to take care of the operating expenses in 1939, no part of which was included in Exhibit No. 26.

Referring to Item No. 6 in the affidavit of N. Walter Stange, affiant avers that all items of inventory have been included in the balance sheet of November 1, 1938 as of that date, and in this connection affiant avers that said items appear under "Capital Assets—General Equipment—\$98,204.49"; that the detail of said "General Equipment" is as follows:

Inventory—Lumber, gates, etc.....	\$33,998.48
Equipment—Autos, tractors, machinery, etc.	64,206.01
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Total	\$98,204.49

[231] That said figure represents an advance of \$7,631.55 over the same asset items appearing in the District's report to the Reconstruction Finance Corporation as of June 30, 1938 (Exhibit "K") and being as follows:

Inventory	\$28,678.95
Equipment	61,893.99
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Total	\$90,572.94

Affiant further avers that in Exhibit No. 26, included in the item of Net Capital Assets in the sum of \$18,649,793.20, there is included the cost of all physical properties purchased by the District for drainage and irrigation purposes and otherwise.

E. E. NEEL.

Subscribed and sworn to before me this 10th day of March, 1939.

VERLIE C. BRANSTETTER,

[Notarial Seal]

Notary Public in and for the County of Sacramento,
State of California.

[Endorsed]: Affidavits. Filed Mar. 13, 1939. [232]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year of our Lord one thousand nine hundred and thirty-nine.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on motion of Respondents and Objectors Claire S. Strauss, et al. for a new trial, pursuant to notice filed March 3, 1939; Stephen W. Downey, Esq., appearing for the Debtor; Lucius P. Chase, Chas. L. Childers, and Peter Tum Suden, Esqs., appearing for the moving respondents; and, A. H. Bargion being present as the official stenographic reporter of the testimony and the proceedings:

Now, at 10:10 A. M., counsel answer to the call of the case, and the Court thereupon orders hearing herein to proceed.

Lucius P. Chase, Esq., argues to the Court in support of said motion; and at 10:50 A.M. Peter Tum Suden, Esq., makes a statement; following which, at 11 o'clock A.M. Chas L. Childers, Esq., makes a statement; whereupon, at 11:05 o'clock A.M. Stephen W. Downey, Esq., argues to the Court in opposition to said motion.

The Court now orders said motion stand submitted for decision. [233]